

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 160/93

Dated the 25th day of November 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

TE OKORO JOSEPH RUNGA
of Christchurch

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Summary

Waitangi fisheries issues generally and the consequences of the Sealord deal specifically were debated on TV1's programme *Marae* broadcast between 11.00 am - 12 noon on Sunday 11 July.

Referring to the range of views about the issues, Mr Runga complained, first, that the programme was unbalanced as the views held by some tribes which opposed the Sealord deal were given minimal exposure, and secondly, that it was inaccurate as it used out-of-date tribal census figures which described Ngapuhi as an iwi.

Arguing that the primary purpose of the programmes in the *Marae* series was to be informative, TVNZ said that, despite the absence of some people who had declined invitations to appear, a variety of views had been advanced. TVNZ declined to uphold the complaint that the item was unbalanced and added that the complex issues would probably be dealt with again on *Marae* "within the period of current interest". The figures used, it said, accurately conveyed the relative populations of the iwi listed. Dissatisfied with TVNZ's response, Mr Runga referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

For the reasons given below, the Authority declined to uphold the complaint.



Decision

The members of the Authority have viewed the programme complained about and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing. The Authority noted that one of its members, Ms Morris, is also a member of the Waitangi Tribunal and was on the Tribunal which dealt with the Sealord claim.

Marae is a programme which highlights matters of particular interest to Maori. Fisheries issues generally and the consequences of the Sealord deal specifically were discussed on the programme broadcast on Sunday 11 July 1993. The participants were Maanu Paul, Matiu Rata, Annette Sykes and Graham Kelly, the Labour Party fisheries spokesperson. Tainui Stephens was the presenter.

Mr Runga complained to TVNZ that the discussion failed to examine the reasons advanced by the many groups who opposed the settlement and he pointed out that none of the panellists challenged the assumption that the settlement was beneficial to Maori. The programme left the impression, Mr Runga continued, that it was an "instrument of government propaganda" as it advanced a "non-controversial approach to a topic loaded with controversy". In addition, he complained that out-of-date tribal census figures had been used in which Ngapuhi was defined as a tribe rather than a runanganui.

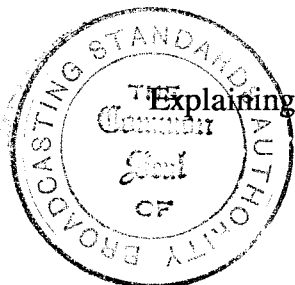
At Mr Runga's request, TVNZ assessed the complaint under standards G14, G15, G16, G20 and G21 of the Television Code of Broadcasting Practice. They provide:

- G14 News must be presented accurately, objectively and impartially.
- G15 The standards of integrity and reliability of news sources should be kept under constant review.
- G16 News should not be presented in such a way as to cause unnecessary panic, alarm or distress.
- 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.

Despite the range of standards nominated, in its report to Mr Runga, TVNZ's Complaints Committee argued that his concerns were encompassed by standard G6 under which broadcasters are required:

- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

Explaining that both the Minister and representatives from the Waitangi Fisheries



Commission declined to take part in the discussion, TVNZ argued that its role was not "to engineer controversy" should it not arise during a discussion. Indeed, TVNZ observed, despite the truly controversial questions noted by Mr Runga, the panellists had shown a remarkable degree of accord and that there was an "overall feeling of optimism" during the debate.

Because of the complexity of the subject of Maori fishing rights, TVNZ maintained that it was not possible to explore every issue in one programme. Overall, it continued, balance could be achieved only during a number of programmes but, it argued, the programme broadcast on 11 July had not in itself lacked balance, impartiality or objectivity.

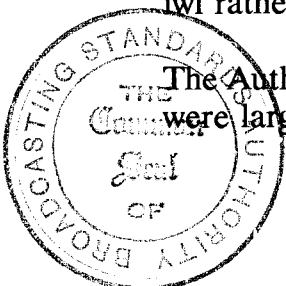
Mr Runga disputed some of TVNZ's points when he referred his complaint to the Authority. Balance would not have been achieved by the Minister's or the Commission's participation, he maintained for example, as they would have added to the pro-settlement sentiment. He persisted with his complaint that the programme lacked balance because of the absence of the anti-settlement perspective. He also maintained that his complaint should be considered under the standards originally nominated.

In its report to the Authority, TVNZ addressed each of the standards specifically. It repeated its contention that the population statistics were accurate for the purpose for which they were used - to indicate the relative size of the iwi listed. TVNZ objected strenuously to Mr Runga's contention that the programme was "an instrument of government propaganda".

When asked to comment on TVNZ's reply, Mr Runga accepted that the issues raised by his complaint were adequately addressed by standard G6 and G20 and he continued to state that it would have been easy for TVNZ to obtain the correct population statistics. Describing the settlement as an act of confiscation, he repeated his core concern that the programme was biased as it excluded the perspective which neither supported nor acquiesced to the settlement. That view, which he argued was essential for a balanced broadcast, had not been advanced during the discussion.

The Authority would observe first that it appears that Mr Runga and TVNZ have been at cross-purposes to some extent in that Mr Runga has raised a number of peripheral matters to which TVNZ has responded as if they were central. An example of this was Mr Runga's subsidiary allegation that TVNZ broadcast only programmes acceptable to the government to which TVNZ responded fully. Despite these arguments from Mr Runga and TVNZ's responses to these points, the Authority concluded nevertheless that Mr Runga's central concern was the absence of a panellist on *Marae* on 11 July who was committed to an anti-settlement stance. As Mr Runga pointed out, the four panellists supported the settlement to varying degrees and, as TVNZ remarked, each displayed a feeling of optimism. Mr Runga's other concern was the iwi population statistics used on the programme which were not the most recent and in which Ngapuhi was shown as an iwi rather than a runanganui.

The Authority agreed with TVNZ, as did Mr Runga in his final comment, that the issues were largely dealt with as an allegation that the broadcast breached standard G6. The



Authority will also refer to standard G20 as Mr Runga considered it was relevant. It appears appropriate to repeat these two standards. The first requires broadcasters:

- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

The second reads:

- 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.

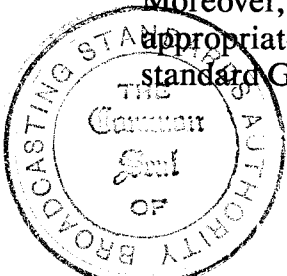
The Authority acknowledged that the programme from the outset had accepted that the settlement was given fact. However, it did not, in the Authority's view adopt a pro-settlement perspective. Rather, it discussed the issues on the basis that now the settlement had occurred - what should be done next? Because of this focus, the programme did not address the question raised forcefully by Mr Runga as to whether or not there should have been a settlement - a question which was discussed extensively in the media at the time of the deal and which remains important for many people.

Having reached the conclusion that the programme assumed the reality of the settlement, the Authority believed that the programme, perhaps by way of introduction, could well have mentioned that the fact of the settlement itself remained contentious. However, to have tried to combine the two distinct issues - whether or not the settlement should have been accepted and its operation in practice - could well have resulted in a programme which explored neither issue adequately.

With regard to the aspect of the complaint which alleged that the programme was unbalanced because the anti-settlement perspective was overlooked, on the basis that the programme presented a balanced discussion about the issue addressed, the Authority declined to uphold the complaint under standard G6. Whereas a reference to the anti-settlement viewpoint might have been useful, a discussion on that matter was not necessary in view of the matters which were the subject of the discussion. As a result, standard G20 was not contravened.

As the second aspect of the complaint, Mr Runga stated that the programme was inaccurate when it used outdated census figures to reveal tribal numbers and included a reference to Ngapuhi as an iwi rather than a runanganui. The Authority declined to rule on the complaint under standard G14 raised initially by Mr Runga as that standard applies only to "news" which must be presented "accurately". *Marae* is a current affairs programme - it is not a "news" one. However, substituting the requirement for factual truthfulness and accuracy in standard G1, the Authority concluded that the figures were not inaccurate for the purpose for which they were put.

Moreover, the Authority was of the view that the use of the population statistics was also appropriately raised under the requirements for balance, impartiality and fairness in standard G6. On that basis, the Authority concluded that, while it was disappointing that



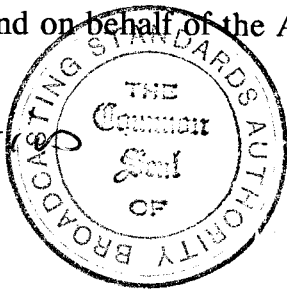
the most recent statistics had not been used, their use for the purpose of showing relativities between Maori populations of different areas, including the primary tribal affiliations of people, was both balanced and fair.

The Authority concluded that the programme broadcast on *Marae* on 11 July was a balanced discussion about the issues canvassed and did not breach standards G6 and G20 of the Television Code of Broadcasting Practice. However, the fact that the settlement has occurred does not remove the feeling among many that the settlement itself is contrary to the rangatiratanga of a number of iwi. As TVNZ observed in its comments to Mr Runga, that issue is one which could well be dealt with specifically in another programme. Those matters, however, were not the issues explored in the *Marae* programme about which Mr Runga complained.

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

Signed for and on behalf of the Authority

JRM



J. R. Morris

25 November 1993

Appendix

Mr Runga's Complaint to Television New Zealand Limited

In a letter dated 14 July 1993, Mr Te Okoro Joseph Runga of Christchurch for the Kahungunu-Rongomaiwahine iwi complained to Television New Zealand Ltd about the programme *Marae* broadcast on TV1 from 11.00am - 12.00 noon on Sunday 11 July.

The programme had been a panel discussion and had dealt with Treaty of Waitangi fisheries issues generally and with the consequences of the Sealord deal specifically, matters which Mr Runga described as being of intense interest. A number of iwi had publicly expressed reservations about the scheme and Ngati Kahungunu-Rongomaiwahine's opposition had been "unwavering from the outset". However, he continued:

The stances opposing were not given exposure by panel representation so that the balance of such a substantive matter to Maoritanga as a whole was therefore biased in favour of the settlement.

He referred to the opposition to the provision in the legislation that the deal settled all Treaty fishery claims, opposition which, he said, did not come across in the programme. He discussed the broad approach taken by each of the four panel members and repeated his concern about the absence of any approach which opposed the settlement, arguing that it was "clearly excluded from the panel".

As a second complaint, he said that out-of-date tribal census figures had been used which defined Ngapuhi as a tribe instead of a runanganui.

He concluded:

At the end I was left the impression the programme was the instrument of government propaganda in having presented a non-controversial approach to a topic loaded with controversy. Also I felt it was an insult to my intelligence as though dissidents were not worthy to allow them expression. It is not that the producers were unaware of the controversies as they have featured them in other broadcasts. But in dealing with such a substantive matter in an hour review concerning the wellbeing and morale of the various iwi a more balanced overview was imperative.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Runga of its Complaints Committee's decision in a letter dated 30 July 1993. As Mr Runga had asked, the complaint had been considered under standards G14, G15, G16, G20 and G21 of the Television Code of Broadcasting Practice although, in view of the contents of the complaint, TVNZ had subsumed all



the concerns under standard G6 which requires balance, impartiality and fairness in programmes dealing with controversial issues.

The programme's first task, TVNZ stated, was to be informative rather than controversial and continued:

Nevertheless, there was some surprise that an issue as disputative as this did not reveal some of the discord indicated by the contents of your letter.

However, TVNZ reported, *Marae* on this occasion had tried to bring together the numerous views in one presentation although it was handicapped, as the item had explained, when both the Minister and the Waitangi Fisheries Commission declined to take part. TVNZ acknowledged that their absence removed the programme's centrepiece but it did not accept "that the broadcast was valueless as a consequence". Because of the absence, however, it was "sensible" for the programme "to keep to issues that could be discussed with authority" by the participants, some of whom had been deeply involved in the fishing debate from the beginning.

TVNZ observed:

With the element of conflict effectively denied "*Marae*" by the absence of the Commission and the Minister, the programme proceeded with the intent of exploring a wide range of opinions. That these did not elicit strong expressions of dissatisfaction came as a surprise to the producers of "*Marae*" - but it is not the job of programme producers to engineer controversy if it does not arise naturally.

The remarkable degree of accord on the panel was explained apparently by their view that despite very real problems and concerns (such as those that you mention) there is an overall feeling of optimism.

TVNZ reported that Maori fishing issues had been explored on television from a variety of perspectives in the past and that *Marae* planned another programme on the issue when the Fisheries Commission agreed to be represented.

Maintaining that the complainant's assertion that the programme was an exercise in government propaganda lacked credibility, TVNZ referred to the provision in s.4(1)(d) of the Broadcasting Act which requires the presentation of significant points of view "within the current period of interest". It declined to uphold the complaint and concluded:

Clearly an issue as complex and controversial as Maori Fishing Rights cannot be explored from every angle in a single programme and balance in the discussion can only be achieved in "other programmes within the period of current interest".

The [Complaints] Committee believes that the points you raise are valid and worthy of putting to the Waitangi Fisheries Commission, but does not believe



that their absence from "Marae" on 11 July meant that the programme in itself lacked balance, impartiality or objectivity.

While it was sorry you found fault with the programme, the Committee did not believe that any rule of broadcasting practice was breached by its transmission.

Mr Runga's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 9 August 1993 Mr Runga referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

The first ground for his dissatisfaction was TVNZ's argument that greater balance would have been achieved by the participation in the panel of the Minister and the Waitangi Fisheries Commission. While agreeing that they would contribute to a discussion, Mr Runga observed that they would also be pro-settlement so that the view of the many who opposed it would still not be advanced.

Secondly, he recalled that his original letter of complaint had referred to the programme as an "instrument" of government propaganda while TVNZ had denied that the programme was an "exercise" in such propaganda. The distinction, Mr Runga continued, was important. While agreeing with TVNZ that two of the speakers could not be called government propagandists, they were known to support the general thrust of the settlement. Where, he asked, were the speakers to represent those who opposed the settlement - an opposition which included the three largest iwi? The programme, he asserted, had not acknowledged the existence of a wide and formidable opposition to the settlement.

Mr Runga maintained his complaint that the programme by using out-dated tribal census figures breached standards G14 and G15.

Summarising his complaint about the item's lack of balance, Mr Runga said:

The producers' panel consisted of 4 pro-settlement panellists. Three of them could be classified 'heavyweights', that is of some mana, but because no heavyweight represented the appositional view the very apparent lack of impartiality was cause for alarm, and the indignity which prompted this complaint. Nor did the interviewer pose any question in representation of an appositional view. The programme clearly created the impression a general acquiescence with the settlement prevails, when this is not so.

This was also the reason for his complaint under standard G16 - news causing unnecessary alarm - and he said the nature of alarm was the threat of the permanent loss of tribal rights.

With regard to TVNZ's use of standard G6 rather than G20 - the fair presentation of all significant views - Mr Runga argued that the requirement for fairness could only



be achieved by deferring the broadcast of the item until it was possible to present all the perspectives on the settlement.

Mr Runga finished by commenting on some of TVNZ's observations in its letter to him. Even if the programme's intention had been to convey information rather than to deal in controversy, he said, in view of the membership of the panel it was not surprising that the information conveyed was "slanted and deficient". Next, he argued, controversy should not be regarded as a bogey as other programmes complied with the primary requirement to be factually correct and could, in addition, be controversial.

Finally, he argued, a programme later in the year did not excuse a biased item now.

In the Complaint Referral Form completed at the Authority's request, Mr Runga summarised his complaint that the programme breached the standards because it gave the impression that there was a general acquiescence to the settlement which extinguished tribal commercial fisheries. He also argued for a formal hearing on the basis:

It is very probable that the Authority may not be able to gauge the depth of feeling attached to this topic, in regard to the Kahungunu-Rongomaiwahine iwi and its historical attachment to its taonga, that its survival as the largest generic tribe (family of New Zealand) rests in this time of its history in the oral freedoms.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 19 August 1993 and TVNZ's reply, 14 September.

Because the establishment and activities of the Waitangi Fisheries Commission were complex issues, TVNZ said that the intention of *Marae* on 11 July was:

... to pull together and discuss (in a calm and rational manner) the issues most pertinent to the majority of Maori. It was recognised from the beginning that it would not be possible to reflect the often strongly held views of every group involved, or of every iwi, and nor would it be possible to canvas all the disparate views.

In view of Mr Runga's dissatisfaction with it considering the complaint only under standard G6, TVNZ addressed each of the standards cited.

Dealing first with standard G6, TVNZ noted that while not every point of view was contained in the programme, an "across-the-board range" of major opinion was included. It pointed out that the programme was broadcast well after the Sealord deal was finalised under which some iwi felt disenfranchised. The programme, it added, focussed on the consequences of the deal rather than the deal itself.



As standard G14 applied to news and current affairs, and as *Marae* was neither, the standard was inapplicable. Nevertheless, TVNZ stated, *Marae* did not show partiality by having a "pro-Commission" bias. The facts were accurate and the population statistics, from library resources, were referred to as "recent" and were used to show the numbers of Ngapuhi in contrast with Ngai Tahu - the largest and smallest iwi respectively.

While expressing difficulty about how precisely standard G15 was allegedly breached, TVNZ again maintained that the population statistics correctly indicated the relative sizes of the iwi.

After stating that the requirement for news and current affairs in standard G16 did not apply to *Marae*, TVNZ considered the complaint under standard G20. It requires broadcasters to present all significant sides on controversial issues fairly and, TVNZ wrote:

As indicated above, it is recognised that not every single viewpoint was reflected in this programme. The reluctance of the Minister of Fisheries and representatives of the Fisheries Commission to appear in the programme readily attests to that. It is acknowledged too that disenfranchised iwi have their own perspectives too - but those matters of controversy have been widely canvassed in news media outlets and "Marae" was trying instead to pull together the various threads to reflect the reality of the present situation.

Whereas the participation of the Minister and a Commission representative would have enabled a discussion about some issues which, in their absence, would have been unproductive, TVNZ stressed the on-going nature of the fisheries debate. It considered that it was "very likely" that some of the issues raised by Mr Runga would be discussed in future broadcasts.

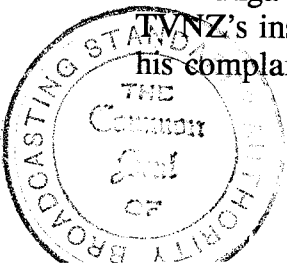
Finally, the requirement in standard G21 to correct facts did not apply as, TVNZ maintained, there were no significant errors of fact to correct.

In conclusion, TVNZ denied "fervently" that the programme was "an instrument of Government propaganda" and noted:

... subsequent to the transmission of the programme there have been concerted attempts on the part of iwi and the Fisheries Commission to reach accord. This attempt to find a way forward appears to reflect a widespread feeling which was perhaps presaged by the constructive debate on "Marae".

Mr Runga's Final Comment to the Authority

When asked to comment on TVNZ's response, in a reply dated 22 September 1993 Mr Runga expressed his disappointment at TVNZ's lack of sensitivity. In view of TVNZ's insistence in dealing with his complaint under standard G6, he accepted that his complaint raised an issue under G6 supplemented, he added, by a complaint



under G20.

He continued to dispute TVNZ's stance that it would not have been possible on the programme to reflect other strongly held views. That approach, he said, was an "abrogation of responsibility because it is also a denial of the truth fundamental to the Treaty settlement." He maintained that a representative of those opposing the settlement should have been on the panel.

He persisted with his complaint under the standards that he nominated, pointing out that current information on population figures was only a phone call away.

Describing the settlement as a confiscation, he said that its acceptance by the panellists could well cause acquiescence and despondency, commenting:

Producers have a responsibility to convey information in such a way as to not cause alarm, and a full revelation of the correct facts would have done that.

Repeating his complaint that the perspective opposing the settlement was missing, the result was a biased and unfair programme which the presence of the Minister would not have reduced. Arguing that state-funded television now apparently only produces programmes acceptable to the government, he added:

Promises to revisit the subject and claims that the programme is but one of a series past and future is not a reason to broadcast biased television.

Further Correspondence

Upon receipt of Mr Runga's final comment, in a letter dated 8 October 1993 TVNZ made two points. First, contrary to what Mr Runga stated, *Marae* was one - not two hours - in length. Secondly, it believed that evidence was required to prove that Mr Runga represented the concerns of Kahungunu-Rongomaiwahine as he claimed. While it accepted his right to complain as an individual, TVNZ said evidence was necessary to justify his contention that the complaint had the support of the entire iwi.

In response, in a letter dated 3 November 1993, Mr Runga recorded his whakapapa, noting:

My family have been representing the Kahungunu-Rongomaiwahine iwi for 650 years and delivered the tribe from annihilation more than once last century.

