

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 25/93
Dated the 18th day of March 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

W.R.J. GRAY
of Rotorua

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

The ownership and development of a block of Maori land at Maketu in the Bay of Plenty was examined in an item on *Frontline* on TV1 on 20 September 1992.

Mr Gray, one of the trustees for the land, complained to Television New Zealand Ltd, as the broadcaster, that the programme was unbalanced and that its research was inadequate in view of the number of relevant facts omitted and factual errors reported.

TVNZ said that the item dealt with the widely accepted problems related to the question of control and management of Maori land and had used the block at Maketu as an illustration of the issues. Acknowledging one minor error of fact about the specific example portrayed, TVNZ considered that the programme's overall thrust was accurate. Dissatisfied with TVNZ's response, Mr Gray referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the item complained about and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.



The Complaint

Mr Gray complained about the *Frontline* item, "Toitu te Whenua", broadcast on TV1 on 20 September 1992 which dealt with a dispute about a block of Maori land - namely the Paengaroa North B 10A Trust at Maketu. Describing himself as both a beneficial owner of and a trustee for the land, Mr Gray alleged that the item contained a number of factual omissions and inaccuracies, and that the trustees' actions were portrayed in an unfair and unbalanced way.

TVNZ considered the complaint under standards 1 and 6 of the Television Code of Broadcasting Practice. They require broadcasters:

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

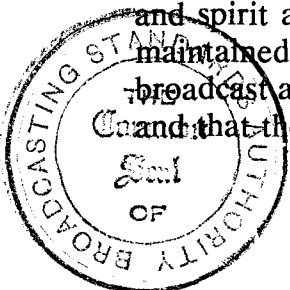
Explaining that the role of a current affairs item when dealing with a complex issue was to summarise the relevant facts and present them in a fair and objective way, TVNZ maintained that the issue addressed in the programme complained about was the rights of the owners of a block of Maori land. The dispute about the particular block referred to had been used as an example of the relevant issues which were being addressed in a legislative amendment currently being considered.

Acknowledging only one minor factual error among the many specific complaints raised by Mr Gray, TVNZ argued that, while the particular dispute was complex, the item had been accurate and had shown that the trustees had acted honourably and correctly. Declining to uphold the complaint, TVNZ continued:

The item reported the views of some of the parties involved in the Maketu dispute as illustrative of the wider issue of Maori land control and management.

When he referred his complaint to the Authority, Mr Gray maintained that on the issue of the owners' control and management of Maori land, the item had not dealt adequately with the respective roles of the owners (who determined usage policy) and the trustees (who were responsible for day-to-day management). Discussing in detail the issues which were relevant to the Block which was focused on in the item, Mr Gray argued that insufficient information was presented to show that the real issue about the particular dispute was a management concern which, as an added aspect to the disagreement, involved a power struggle between various factions among the owners. Because of inadequate research, he wrote, an unbalanced programme had been broadcast in which the current trustees were portrayed as incompetent, unfeeling and uncaring.

In response, TVNZ expressed the opinion that the item had been accurate both in fact and spirit and pointed out that Mr Gray had appeared in it to explain the issues. It maintained, moreover, that the item was thoroughly researched, that the comments broadcast about the particular dispute were a fair reflection of the viewpoints gathered and that the trustees were not portrayed negatively. Finally, TVNZ maintained that a



complex and difficult topic had been dealt with fairly and accurately and that the broad issue - the beneficial owners' control over a block of Maori land - was of sufficient public and political concern to justify a proposed legislative amendment.

In his final comment to the Authority, Mr Gray disagreed with TVNZ's claim that the particular dispute was complex. It amounted, he said, to a sharemilker who breached the terms of his sharemilking contract when he refused to leave the land upon the termination of his contract. Mr Gray also argued that the trustees' relationship with the owners, as portrayed in the item which was broadcast, would not be altered by the proposed change to the legislation. Again emphasising that the "complex" dispute about the specific block merely amounted to a breach of contract, Mr Gray concluded that the disagreement was neither "Maori" nor "racial", but a matter of family politics where one side had used TVNZ to advance its case.

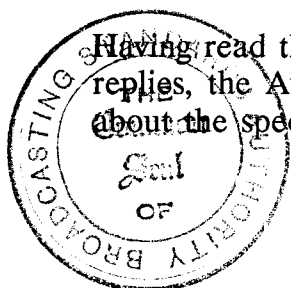
The Dispute

As the particular dispute about the Paengaroa North B 10A Block was being used only as an example of the deficiencies in section 438 in the Maori Affairs Act, TVNZ reported that the item only touched on some aspects of it. It was broadcast that the trustees had decided not to renew (from 1 June 1992) the sharemilking contract held by a Mr and Mrs Morrison and that Mr Morrison's mother was one of the 1700 or so beneficial owners of the land. Some of the owners had formed an Action Group to object to the (then) trustees' decision because, the programme stated, the Morrisons were family and had improved the land considerably during their tenure.

After the Action Group had protested the original decision, the matter was reconsidered by the trustees. Upon reviewing the decision, TVNZ reported, those original trustees were divided about whether or not to renew the contract. In view of that division, in July 1992 a new group of trustees was appointed by the Maori Land Court and they had decided to continue with the non-renewal of the Morrisons' sharemilking contract and to proceed with their replacement by a "Pakeha" couple (the Scotts). However, TVNZ continued, because of various matters which had been taken to the Maori Land Court, at the date of the broadcast the Morrisons' cows were still on the block and the "Pakeha" couple had not taken up residence. The item reported that one well publicised meeting of the owners had taken place at the suggestion of the Court and had attracted 130 people who had voted overwhelmingly in favour of retaining the Morrisons.

In view of that brief synopsis, the Authority understood TVNZ's argument that the reference to the particular block was relevant to the item's overall theme which was that the beneficial owners of a block of Maori land have minimal rights when compared with the rights of the trustees. That approach was confirmed by the broadcast comments of Mr Gray, an experienced trustee, who suggested that the trustees' duties to the land were of overwhelming importance when compared to their duties to the owners.

Having read the extensive material supplied by Mr Gray and TVNZ's comprehensive replies, the Authority now believes it better understands the reasons for the dispute about the specific block of land. It found particularly useful a decision of the Maori



Appellate Court when one of the beneficial owners of the Block sought an injunction to prevent the trustees (appointed in July 1992) from administering the lands vested in them. The written decision dated 22 October 1992 recorded the events involving the disputes about the land during the previous year, the results of the various Court hearings and the matters awaiting adjudication.

That Appellate Court decision was released some five weeks after the broadcast of the item to which the complaint relates. However, the hearing had taken place on Thursday 17 September, three days before the broadcast, and, in an oral decision released on that day, the three Judges had declined to grant the injunction.

The Authority is aware that the functions of the Maori Land Court and Appellate Court are not necessarily supported wholeheartedly throughout Maoridom. Nevertheless, because of the Courts' extensive involvement in the current dispute, the Authority has accepted the Appellate Court's description of both the events and the attitude of the participants. In the oral judgment made before the broadcast of the *Frontline* item, Acting Chief Judge McHugh stated:

Now I want to look first of all at the conduct of the trustees, and I might say that the trustees have acted promptly, they have acted properly, they have done everything they should have done. This Appellate Court commends the trustees for the action they have taken. They certainly acted promptly in getting the farm consultants report, they acted quickly when they were given that report, and the recommendations that were contained in it.

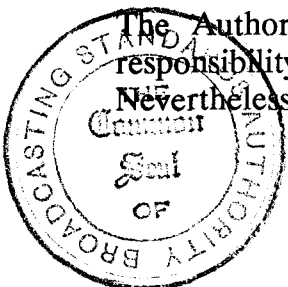
The judgment also recorded the reason why the trustees declined to renew the Morrisons' sharemilking contract - a fact not presented during the broadcast. The judgment stated that the Morrisons, in addition to the sharemilking arrangement with the trustees for the Paengaroa North B 10A Block, had leased adjoining land and the operation of both blocks raised a possible conflict of interest. Furthermore, it was recorded that the owners who were contesting the trustees' decisions (the Action Group) were a minority and that a frank discussion involving all the owners was necessary to avoid the parties adopting entrenched positions.

A summary of the judgment is included on pp ix - x of the Appendix.

Standard 1 - Factual Accuracy

In his complaint to TVNZ Mr Gray listed eight points on which the programme had been incorrect or had created or implied an incorrect impression because of the omission of what he described as relevant facts. TVNZ maintained that the item, other than on one minor point, was factually correct and that what Mr Gray described as factual inaccuracies were either not dealt with during the item or were incidental to it.

The Authority agreed with TVNZ that most of the factual issues, such as the responsibility for building the cow shed, were neither incorrect nor impliedly so. Nevertheless, it believed that two matters required further examination. The first was



Mr Gray's allegation that:

The programme stated that the Morrisons were supported by all of the Owners. There are over two thousand Registered Owners in all and at the maximum the Morrisons were supported by 120 people and some of them including Mr Young, and Mr and Mrs Williams are not owners.

TVNZ responded:

The [Complaints] Committee noted that the item did not state the Morrisons were supported by all the owners. Researchers were told that of the 130 people present at the June meeting, 125 had voted in favour of the Morrisons retaining their sharemilking contract.

Mr Gray later supplied the Authority with a list of over 2000 owners but as TVNZ's reporter had referred during the programme to more than 1700 beneficial owners, the Authority declined to uphold the first aspect of the standard 1 complaint that the item suggested the Morrisons were supported by all, or indeed most, of the beneficial owners. However, the Authority did have some sympathy for Mr Gray because viewers might have been misled by the use of the term "the owners" when that phrase was used throughout the programme to refer to the minority group of owners who actively opposed the trustees.

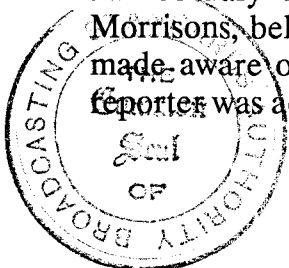
The second aspect of the standard 1 complaint alleging factual inaccuracy was put by Mr Gray in the following way:

[The programme] insinuated that a part of the problem was racial in that the replacement Sharemilker was a Pakeha who was depriving a Maori Owner of employment when in fact the replacement Sharemilker was a Maori of Ngati Toa and Raukawa descent and [TVNZ's reporter] was aware of this fact.

TVNZ replied:

The Morrisons and another person interviewed in the item believed the new sharemilkers (the Scotts) were Pakeha. The new sharemilkers themselves did not realise they had Maori ancestry until a few weeks ago. When the item was broadcast the reporter had become aware of the Maori ancestry but she referred to them as Pakeha because everyone she spoke to at Maketu regarded them as Pakeha. Ironically, those that have taken over as sharemilkers following the Scotts are Pakeha. That notwithstanding, the Committee did not believe that the item suggested a racial motive was involved in the desire by the owners to have a greater say in the way their land was managed.

From the other information supplied to the Authority, it was apparent that the trustees, in February 1992 when appointing the Scotts as the sharemilkers to replace the Morrisons, believed them to be a Pakeha couple. However, in April the trustees were made aware of the Scotts' whakapapa. The Authority was also advised that TVNZ's reporter was advised of that information and of sources with whom it could be confirmed



but, apparently, she did not seek confirmation. In its report to the Authority, TVNZ referred to the trustees' belief in February when appointing the Scotts and argued that, regardless of the subsequent information, the Scotts continued to be regarded as non-Maori by the residents of Maketu.

On three occasions during the item, the couple who had been appointed to replace the Morrisons were described as "Pakeha". That was the description also used by the reporter. The Authority decided that, as TVNZ's reporter was not reporting as a resident of Maketu but, to use TVNZ's words, in a "fair and objective way", the broadcast breached the standard 1 requirement for factual accuracy when describing the replacement shareholders, inaccurately, as a "Pakeha" couple. Consequently, it upheld the second aspect of the standard 1 complaint.

Standard 6 - Balance

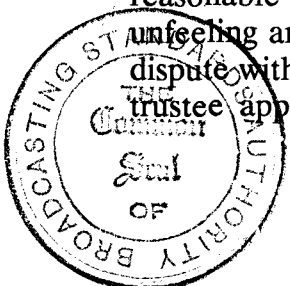
The core of Mr Gray's complaint about the item's lack of balance and fairness was that, because of inadequate research, the programme showed the trustees "in a very bad light". TVNZ replied that the "right of owners to have a say in what happens on Maori land", was the issue covered and, in addressing the broad issue, a particular land dispute had been used as an example. The most relevant facts about the dispute's complexities had been summarised in a fair and objective way and, TVNZ maintained, the programme had not shown the trustees in a bad light.

There was no suggestion that the trustees had discharged their duties other than in an honourable and correct fashion. The item highlighted the problems with the present legislation. It showed two sides of a very difficult and complex dispute and suggested that the present laws meant that, sometimes, owners of Maori land felt they did not have as much control as they wished.

The Authority was thus required to consider whether the Trustees had been presented in a bad light and, if so, whether that was justified in terms of balance and fairness.

Because of the focus given to the faction of the owners (the Action Group) who supported the Morrisons in their efforts to be retained as sharemilkers, the Authority considered that they had been given a good opportunity to present their case. By way of illustration of the type of comment made by the members of the Group about the trustees, the Authority would refer to Mrs Laureen Morrison's broadcast remark to the effect that the owners who supported them were no longer taken in by the "rubbish" the trustees "dished out". The tenor of the comments reported was not necessarily that the trustees were incompetent, but the Authority agreed with Mr Gray that they were cast in a "bad light" by the suggestions that they were uncaring and unfeeling.

The Authority examined the broadcast to see whether the trustees were given a reasonable opportunity to respond to the claims that made them appear uncaring and unfeeling and whether the trustees were given a chance to explain their actions in the dispute with the sharemilkers. It noted that Mr Gray was interviewed. He spoke as a trustee appointed in mid 1992 and was described as experienced in the work. He



explained his philosophy about carrying out his responsibilities as a trustee generally, but was not shown explaining why the Morrison's sharemilking contract had not been renewed.

As the Authority believed that information about the non-renewal of the Morrison's contract was central to the dispute focused on, it decided that Mr Gray had not been given a reasonable opportunity to respond to the allegations about the trustees' recent actions and, as a result, had been portrayed unsympathetically.

In the discussion concerning the specific dispute about the appropriate sharemilkers for the Paengaroa North B 10A Block, considerable material was advanced from one side, including some which displayed the depths of the feelings involved, while virtually none was put forward from the other. Further, as the material advanced reflected adversely on the trustees, the Authority decided that the broadcasting standard requiring balance and fairness had not been complied with. Accordingly, it concluded that the broadcast, by omitting the trustees' perspective about the specific contractual dispute, breached standard 6 requiring balance and fairness.

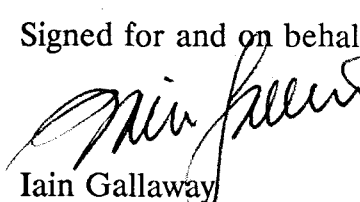
For the reasons set forth above, the Authority upholds the complaint that the broadcast by Television New Zealand Limited of the item "Toitu te Whenua' on *Frontline* on 20 September 1992, breached standards 1 and 6 of the Television Code of Broadcasting Practice.

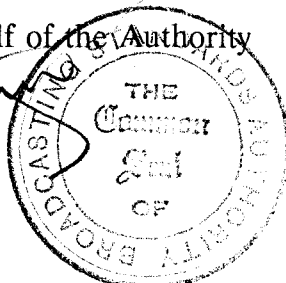
Having upheld a complaint the Authority may make an order under s.13(1) of the Act. The Authority decided that an order was appropriate in this case, particularly in view of the insufficient opportunity given to the trustees to put their side of the dispute.

ORDER

The Authority orders TVNZ to broadcast on *Frontline* within 14 days of the date of this decision a statement approved by the Authority which is a brief summary of this decision.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



18 March 1993

Appendix

Mr Gray's Complaint to Television New Zealand Limited

In a letter dated 22 September 1992, Mr W.R.J. Gray of Rotorua complained to Television New Zealand Ltd about an item shown on *Frontline* on 20 September which dealt with a block of Maori land - namely Paengaroa North B 10A at Maketu.

Noting that he was both a beneficial owner of and a trustee for that block of land, Mr Gray listed 17 grounds for the complaint. His principal concern was listed in the first when he wrote:

The programme was completely unbalanced and the research left much to be desired.

Grounds 2 - 8 referred to factual inaccuracies which were reported during or inferred in the programme when it dealt with the replacement of the Morrisons by the Scotts as sharemilkers. Grounds 9 - 10 explained why the Morrisons were replaced by the Scotts - an explanation which, Mr Gray alleged, was not adequately presented during the programme. The unbalanced coverage of the reasons why the Scotts later withdrew from their contract formed complaint grounds 12 - 14 and the inadequacies of the programme's coverage of the trustees' actions were complaint grounds 11 and 15 - 17.

Enclosing for TVNZ a paper titled "Legal Points for Consideration" to add to the paper "State of the Trust" given to the *Frontline* team, Mr Gray complained:

The point being that if you intend to cover Maori issues in the future make sure you have all of the facts and that you do the job correctly because what this Report has done is denigrated Maori honesty, accountability and integrity, in other words there isn't any. It has also shown Maori incompetency and given support to an illegal activity, and shown the Trustees in a particularly bad light. The point being it was done by another Maori.

He concluded by asking for an apology and public correction and attached ten excerpts from the script and provided details which, he said, justified describing the extracts as "false statements" or "generalities".

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Gray of its Complaints Committee's decision in a letter dated 4 November 1992. It reported that the complaint had been considered under standards 1 and 6 of the Television Code of Broadcasting Practice which require that programmes be truthful and accurate and show balance, impartiality and fairness.

TVNZ began by explaining that current affairs items, when dealing with complex



issues, summarise the relevant facts and present them in a fair and objective way. In regard to this specific complaint, it continued:

It was also noted that this item addressed a wide issue about Maori land by using a specific case as an example. For that reason detail was only included when it was relevant to a wider issue. It was not an item solely about the complexities of this particular land dispute, but was an item about the rights of owners to have a say in what happens on Maori land.

TVNZ rejected the complainant's point of view that the current legislation was satisfactory and referred to several other disputes which had arisen because of deficiencies in the legislation.

The wider issue was thus a legitimate subject for *Frontline* to cover. The [Complaints] Committee emphasised again that it was the wider issue that was being examined - through the experience of the Maketu dispute.

Dealing with the complainant's 17 specific complaints, TVNZ wrote in regard to the first which alleged a lack of balance and inadequate research:

The programme addressed the issue of the rights of owners when land is controlled by a Trust under section 438. This is a legitimate matter for consideration. The Minister of Maori Affairs is presenting a new Bill to close up some anomalies so the topic was not only legitimate but topical as well. The [Complaints] Committee was satisfied that the programme was the product of detailed and thorough research.

Grounds 2 - 8 had alleged factual inaccuracies and TVNZ responded to each denying any inaccuracy. The facts advanced as grounds 9 - 10 had not been disputed in the broadcast and after describing grounds 12 - 13 as incidental, TVNZ said ground 14 raised opposing views, both of which were reported in the item. Ground 15 was regarded as "incorrect" and grounds 16 - 17, in TVNZ's opinion, were dealt with satisfactorily during the item.

In response to Mr Gray's final comment, TVNZ stated:

In considering the final paragraphs of your letter, the Committee noted that the item at no time supported illegal activity. It reported and showed the owners in court and stated that they had found themselves in trouble with the law - but the programme made no judgment on their actions.

Also, it was the view of the Committee that the programme did not show the trustees in a bad light. There was no suggestion that the trustees had discharged their duties either (sic) than in an honourable and correct fashion. The item highlighted the problems with the present legislation. It showed two sides of a very difficult and complex dispute and suggested that the present laws meant that, sometimes, owners of Maori land felt they did not have as much control as they wished.



The item reported the views of some of the parties involved in the Maketu dispute as illustrative of the wider issue of Maori land control and management.

Mr Gray had referred to parts of the script which he argued did not record the factual history of the trust correctly. TVNZ acknowledged one error which it regarded as minor but said that the other reported statements were accurate. It then referred to some other relevant facts and concluded:

With respect, the [Complaints] Committee believed that, while there may have been one or two minor errors of fact in the item they were matters of detail and that the overall thrust of the programme was correct.

It believed there was no breach of truth and accuracy (Code 1) and it felt the programme was properly balanced (Code 6), giving due weight to each side of the dispute.

Accordingly your complaint was not upheld.

Mr Gray's Complaint to the Broadcasting Standards Authority

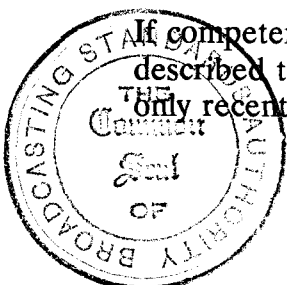
Dissatisfied with TVNZ's response, in a letter dated 7 November 1992 Mr Gray referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Dealing with some of TVNZ's introductory comments, he stated that the item did not deal adequately with the distinction between the beneficial owners of a block of land, who determine usage policy, and the trustees who are responsible for day-to-day management. In response to TVNZ's statement that the *Frontline* item was an example of a dispute between the beneficial owners and the trustees and its reference to two other such cases, Mr Gray said that he was familiar with both instances and provided extensive detail about how he had been actively involved in investigating the actions and, where appropriate, seeking the removal of the trustees in both instances. TVNZ, he stressed, had not investigated the existing legal provisions adequately.

He then referred to the 17 points raised in his original letter of complaint and he repeated his allegation that the research for the programme was insufficient as TVNZ had not checked the accuracy of the dissident owners' comments with the registrar of the appropriate Land Court or by examining the accounts held by the trustees. He wrote:

These approaches were never made even though [*Frontline*] was aware of the hidden agenda of the dissident owners and non-owners.

If competent research had been done, he maintained, the programme would not have described the Scotts as Pakeha. He refuted TVNZ's contention that the Scotts had only recently discovered their Maori ancestry. He proceeded through points 3 - 17



and, while agreeing that TVNZ's explanation was not basically incorrect, said that it revealed a superficial understanding of the issues involved. He added that the programme did not present the "full truth" and that it disclosed bias or indicated a lack of balance. For example, in regard to point 12 he claimed that the programme did not deal adequately with the trustees' actions when they sought to replace the unsatisfactory sharemilkers (the Morrises) with the Scotts. Mr Gray complained:

In fact at no stage did the programme show, or even discuss the effects upon other Maori Entities that the continuing effects of similar type actions by the Morrises would have on both Maori and non Maori farms in that a precedence (sic) would be set in respect to people not vacating their employment upon the expiration of their work contract. It would not be a situation that involved only Maori Land, the precedence (sic) would apply to all work situations throughout New Zealand and was discussed with the Reporter in front of witnesses. It could even affect her if she was promoted and the person she was replacing refused to move on. Another [example of] imbalance and poor research.

When dealing with the programme's inaccurate and unbalanced portrayal of the role of trustees, Mr Gray wrote:

In this case the Owners wanted the Trustees to continue to employ an incompetent Sharemilker and if the income was down then they took the responsibility and had to account to other Owners. The Owners who were trying to dictate the terms had no accountability or responsibility to the other Owners. By trying to get the Trustees to employ an incompetent sharemilker that hardly seems logical or responsible and had the Reporter carried out her research correctly and in sufficient depth then she would have realised that this was totally unacceptable. The Owners as such are the equivalent of Company Shareholders to a degree and decree Policy, Usage and Direction of the Trust Property and they do this at the initial Court Meeting which determines the Trust. They do this with the formation of the Trust and confirm it at every Annual General Meeting ... and have the right to express their wishes and provided they fall within the "Objectives of the Trust Order" then they will be complied with. There is adequate redress in previously mentioned legislation if the Trustees move out of line however to date the Owners have had no grounds because ... no Applications to that effect have ever been received by the Court.

He finished his specific complaints with the remark:

What the Paengaroa situation came down to was a straight power struggle between various family factions and now that the Morrises have gone the same Owners are now saying that there is no way they should be permitted to return.

Mr Gray referred to the ten extracts from the script included in the original complaint to TVNZ and which revealed inadequate research about the role of the



Trust, the advice received by the Trust, the respective responsibilities of the trustees and owners and the Scotts' whakapapa. He objected specifically to the current sharemilkers being described as a "Pakeha couple" which, in view of the complex events leading to their being appointed, was "racist, offensive and emotional".

In summary, he said that he had referred his complaint to the Authority on the grounds:

- a) The research was totally inadequate and did not reveal the hidden agendas of the people concerned in that I have a letter from the Morrisons dated 21 February 1992 in which he threatened to use the Media to obtain his own ends. ...
- b) The programme was totally unbalanced in that it was not what was said, it is what wasn't said.
- c) The overall thrust was that the Trustees were incompetent, unfeeling and that they would not listen to a group of Owners despite their requests being detrimental to the interests of the Trust.

He continued:

The fact that the Owners had no grounds, were in support of incompetence and were putting the Trust property at risk was totally missed by the Reporter due to inadequate research.

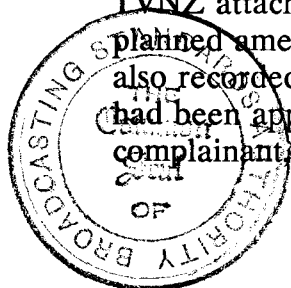
There is no doubt that *Frontline* and Miss Paul [the reporter] were used and because of her inexperience in Maori land matters she fell into the trap.

TVNZ's Response to the Authority

As is its usual practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 9 December 1992 and TVNZ's response, 16 December.

TVNZ began by describing the issues as complex and stating that, as the *Frontline* story had been accurate in fact and in spirit, the complaint had not been upheld. TVNZ also pointed out that Mr Gray was not a disinterested party.

TVNZ then maintained that the programme's intention was to highlight anomalies in the smooth running of "Section 438" trusts. It agreed with the Board of Directors analogy made by Mr Gray and took it a step further in describing the beneficial owners as dissatisfied shareholders who had tried to unseat the directors/trustees. TVNZ attached brief extracts from the Maori Affairs Act 1953 and said that the ~~plaintiff~~ amendments were designed to invest the owners with more control. TVNZ also recorded that Judge Hingston and the registrar of the local Maori Land Court had been approached but had declined to appear on the programme. Mr Gray, the complainant, had accepted an invitation to explain the issues.



Discussing Mr Gray's belief that the current legislation provided adequate protection for the beneficial owners, TVNZ said that that opinion was shared by neither the beneficial owners of the specific block of land nor by the government as was evident by the proposed amendment. Furthermore, TVNZ said, an experienced legal advisor on Maori land issues had been consulted during the preparation of the programme.

TVNZ persisted with its argument that the programme had been thoroughly researched and explicitly distanced itself from Mr Gray's description of the beneficial owners who appeared, as dissidents.

With regard to the complaint that it was inaccurate to describe the replacement sharemilkers (the Scotts) as Pakeha, TVNZ maintained that the Scotts' whakapapa was only definitely established recently.

After dealing with a number of points of the complaint which, it maintained, were not related to the contents of the programme, TVNZ then said that the item's comment that the Morrisons had worked hard to improve the farm was a fair reflection of the viewpoints gathered. Attaching a report which indicated that different studies had provided conflicting reports as to the quality of the Morrisons as sharemilkers, TVNZ did not accept that the programme implied that the Morrisons were "hard done by". The dispute about the quality of the Morrisons as sharemilkers had split the previous trust and, for balance, the item had included extracts from interviews with both a former and current trustee.

Noting that some detail raised by Mr Gray was not reported as it was incidental to the programme and that some issues had been in dispute when the programme was prepared, TVNZ then focused on the matters in the script described as false or misleading. After dealing with each matter, TVNZ wrote:

To sum up we believe the item was a fair and accurate report of a very complex and difficult issue. It was a subject of importance and an issue which has concerned the Government sufficiently to propose a change in the law.

TVNZ also recorded its disappointment at the way in which Mr Gray had expressed his dissatisfaction. That had involved a telephone call on the evening the programme was broadcast, apparently from Mr Gray, threatening the life of the reporter, and an abusive fax from Mr Gray in response to the decision from TVNZ's Complaints Committee to decline to uphold the complaint.

Mr Gray's Final Comment to the Authority

When asked to comment on TVNZ's response, in a lengthy letter dated 23 December 1992 Mr Gray began:

The matters raised by myself are not complex at all. It ultimately comes down to a situation whereby a greedy sharemilker who was in breach of a



sharemilking agreement refused to move on at the expiration of his contract, because he was onto such a good thing. He was in receipt of two incomes, at the expense of the Trust, and he enlisted support from other people to support his actions by misleading them.

It was irrelevant, he added, that the farm was located on a block of Maori land and, furthermore, the proposed law changes would not have affected the situation. It was unfortunate that *Frontline* had chosen to use the particular block as the trustees, both past and present, had complied completely with the appropriate legislation.

He presented the obligations on trustees (both under the Trustee Act 1956 and the Maori Affairs Act 1953) and outlined the process for the establishment of a section 438 Trust. In his view:

Section 46 of the proposed Legislation is no different than what is already happening now because while the owners at anytime may propose, discuss or recommend if it is detrimental to the Trust as a whole the Trustees are not required to do anything. The Trustees ultimate responsibility is to the Trust and this seems to have been missed by the programme.

Referring to the *Frontline* item, he questioned the relevance of the experience of the legal practitioner consulted by TVNZ and maintained that the programme was unbalanced as the total time given to the speakers opposing the Trustees' stance far exceeded the time that he had been given to explain the Trustees' position. He argued that one of the people who spoke out in favour of the Morrisons did so because of a financial benefit which flowed as a family member had been employed by the Morrisons. He also attached a decision from the Maori Appellate Court dated 17 September 1992 in which the current Trustees had been commended for their work. He continued:

I would submit that the "Dissidents" are most unhappy because they cannot get their own way and because the Trustees are not prepared to bow down to pressure and to support them in an illegality. Furthermore, the Trustees were prepared to put their own honesty, accountability and integrity on the line and regardless it is totally unrealistic to have individual owners dictating the operation of a Trust as this would lead to anarchy. The owners still need to operate through a Management Group, to wit the Trustees.

He contested the independence of the Farm Advisor's report given to TVNZ, and supplied by TVNZ to the Authority, on the basis that the inspector had been employed by the Morrisons before the expiry of their sharemilking contract. He also commented on the minimal current interest in the land of some of the others who had spoken against the Trust.

He summed up under seven points as follows:

The Morrisons and the Dissidents wanted support for a Breach of Contract; One, in respect to a legally registered Sharemilking Agreement



which the Morrisons breached and secondly the Contract which the Trust had entered into with the Scotts and which has been recognised as being a legal contract by the Appellate Court. When neither the two previous Trustees nor the current Trustees were prepared to give that support they turned to the Media and twisted the situation to their own advantage. In the process [they] turned it into a racial situation and a Maori Land issue which was not correct. (This was not recognised by the Frontline Team.)

2) While doing some work on the land, he had been approached by Mr Morrison who claimed that he (Mr Gray) had been "shown up" on *Frontline*.

Points 3), 4), 5) and 6) referred to incidents when he had been verbally abused either during the preparation or as a result of the *Frontline* programme.

7) Mr Gray maintained that the entire item was unbalanced when it had tried to use the problems with the particular trust as an example of difficulties with section 438 Trusts. The particular problem, he added, involved a breach of contract. He argued:

The Trustees of Paengaroa North B 10 A Trust should have been put up as examples and Role Models of Maori who were prepared to put accountability, responsibility and integrity before anything else and who were prepared to make hard decisions regardless of relationships and emotive issues, provided that they were correct, and who were prepared to meet their obligations and certainly not as Court pawns.

Instead they were kicked in the teeth by *Frontline* and were placed in the general category as another example of Maori incompetency, something I take great exception to.

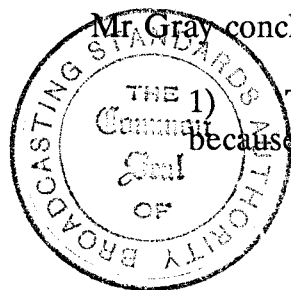
He concluded by reiterating that the issue was contractual. It was not Maori, not racial nor anything else and:

It was a pity that *Frontline* got caught up in a situation of which they had no understanding of the internal Maori politics.

In a fax dated 10 January 1993, Mr Gray commented further and pointed out that, under the present legislation, the beneficial owners have full access to all the records of a Trust and to redress through the Courts. He quoted a legal text which stated that Courts would remove Trustees who abused their Trust but that conflict between beneficial owners and Trustees was not necessarily sufficient in itself to remove a Trustee. Moreover, mere caprice by a beneficial owner, without reasonable cause, was insufficient.

Mr Gray concluded:

There has been no application to date for the removal of any Trustee because of insufficient grounds.



- 2) This matter was not a Maori Land issue, it was a straight out "breach of contract".
- 3) The use of the land has not changed and nor has it ever been suggested that it will. (It is still a farm.)
- 4) Certain Beneficial owners and Dissidents showed "Caprice" and "Hostility" because they could not get their own way in dictating to the Trustees.
- 5) I have spoken to several vets and other in respect of Mr Lintons' Report [the agricultural consultant cited by TVNZ who did not accept that the Morrison's sharemilking contract should have been terminated] and there are numerous debatable points in it. Furthermore, because of the contradiction between the various reports it may have been proper for TVNZ to have disregarded them and stuck to the main issue, the "Breaches of Contracts".

I rest my case.

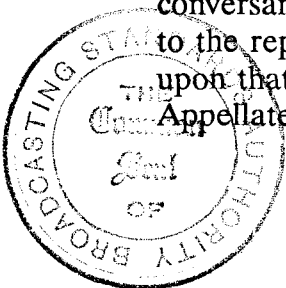
Maori Appellate Court Decision

As noted during the item "Toitu Te Whenua", a number of the disputes between some of the owners of Paengaroa North B 10A Block and the trustees have come before the Maori Land Court. The item complained about was broadcast on 20 September 1992. A few days earlier, Thursday 17 September 1992, three judges of the Maori Appellate Court (Judge McHugh presiding) gave a unanimous oral judgment on an application by one of the owners who sought an injunction to prohibit the trustees from administering the Block. The application was refused.

The full decision dated 22 October 1992 provides a comprehensive account of the recent disputes between the owners and the trustees. However, as the oral judgment was delivered prior to the broadcast of the *Frontline* item and as the item referred to the Court's involvement, the Authority believed that the decision, summarised below, was relevant and accordingly treated it as material which was pertinent to its assessment of the complaint under standards 1 and 6.

In the oral decision, the Judge commended the trustees for the prompt action taken after their recent appointment in obtaining a farm consultant's report and acting on it. He continued:

Right at the bottom of this matter lies the question of whether the sharemilker should be left on this property or not. There is a fraction of the owners here who obviously support his retention. I don't know whether those people were conversant with the information that the trustees had, whether they had access to the report that was given to the trustees. But the trustees acted in reliance upon that report, and despite the examination of that witness today this Appellate Court is satisfied that the reasoning contained in the consultant's



advice to the trustees was quite fair and accurate and should have been relied upon by those trustees, and they did, and they acted properly.

A little later he added:

We are satisfied that the trustees have done their best to cope with the situation, now they need support, and they have acted properly.

The judgment also questioned whether it was in the best interests of the owners for the Morrisons, as sharemilkers, to have an interest in a block of land contiguous to Paengaroa North B 10A as it raised "a question of a conflict of interest".

The judge concluded:

I thank counsel for your thoughtful submissions, but I make a plea to the owners, it's a pity that we have to continue with these actions in this Court. It's a pity that it can't be resolved. There are two strong factions I can see. There is a silent majority who don't appear on the face of it to be taking much interest in these proceedings. Perhaps it is because of all the disputes and the fights that have been going on and they don't want to be party to it. I never give up hope that there can't be a compromise. On the other hand if you can't reach a settlement then of course the Courts have to intervene, and in these cases there is no winner, only losers. Incidentally, the trustees need to be in place because under their Order they have to call a meeting of owners, that's one of the duties they also have to do, and I hope that when that meeting is called that there will be a substantial turn-out of owners and that you'll have a frank discussion. I would hope that you would not polarise yourselves, and you would not drive yourselves further apart. I would hope that you would find some way of settling this issue.

