

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 57/93

Dated the 3rd day of May 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

RODNEY WALSH, HONORARY
CONSUL GENERAL OF IRELAND
of Auckland

Broadcaster
ACCESS COMMUNITY RADIO
AUCKLAND INCORPORATED

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

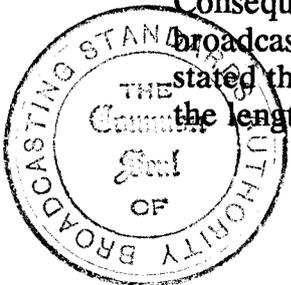
DECISION

Introduction

Information on Ireland, a five minute broadcast of political views, was broadcast by Access Community Radio in Auckland on Sunday 8 November 1992. It was followed by *Images of Ireland*, an hour-long broadcast comprising information and items of cultural interest.

Mr Walshe, Honorary Consul General of Ireland and sponsor of the *Images* programme, complained that the *Information* one was unbalanced and that it presented radical views which supported an organisation illegal in Ireland. He said that the political programme did not relate to the cultural tone of the other programme and that broadcasting them consecutively was an abuse of programming ethics.

Access Community Radio said that the script for the *Information* programme on 8 November did not comply with the programme presenter's proposal for airtime. Consequently, it had arranged for all future scripts to be reviewed by the station before broadcast and, in addition, for the broadcast of a disclaimer at regular intervals. It stated that the time slot for the *Information* programme was neither at the time nor for the length requested by the people who prepared it. Dissatisfied with the broadcaster's



response, Mr Walshe referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have read a transcript of the programme complained about and have read the correspondence (summarised in the Appendix). The complaint, when referred initially to the Authority, encompassed both a broadcasting standards matter and a programming issue. The Authority explained to the complainant - Mr Rodney Walshe, Honorary Consul General of Ireland - that scheduling was not a matter over which it has jurisdiction. After the broadcaster further considered the complainant's concern, the programme complained about, *Information on Ireland*, was rescheduled and the complainant withdrew that aspect of the complaint. However, he maintained his complaint that the broadcast on *Information on Ireland* on 8 November 1992 did not comply with the balance requirement in s.4(1)(d) of the Broadcasting Act 1989.

Section 4(1)(d) 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.

Mr Walshe considered that the programme was in breach of the standard as, in its assessment of the strife in Northern Ireland, it expressed the strong anti-British sentiments of the Provisional IRA. It was, he added, a biased political viewpoint.

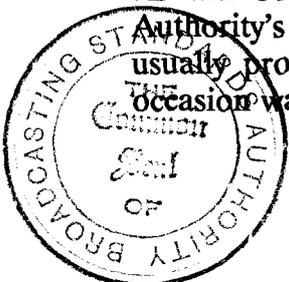
Ms Leona Bresnehan, Station Manager for Auckland's Access Radio, acknowledged that the 8 November broadcast bore no resemblance to the programme description in the application for airtime. She added that Access Radio reserved the right to read all scripts before broadcast and that it intended to require that this practice be followed in future with *Information on Ireland* programmes or airtime would be cancelled.

Furthermore, as an unrelated management practice which, coincidentally, was an issue at the time, it had been decided to broadcast a disclaimer regularly to the effect:

The views expressed by community programme-makers on Access Community Radio Auckland are not necessarily views with which this Access Radio Society agrees or with which any other community programme-maker agrees.

Ms Bresnehan advised, before *Information on Ireland* was rescheduled, that the disclaimer would now be broadcast between the *Information* and *Images* programmes.

As will be apparent from the Appendix, the broadcaster did not respond to the Authority's request for information for more than two months. In view of Access Radio's usually prompt responses to letters, the Authority accepted that its request on this occasion was accidentally mislaid.



In later correspondence, Ms Bresnehan has stressed the functions of Access Community Radio which are to maintain a facility for community groups and to reflect diverse cultures and lifestyles. The Auckland Society's second aim requires it to:

- (b) Sustain the greatest possible freedom of speech and expression consistent with responsible broadcasting within the law.

She also pointed out that Access Radio in Auckland broadcast three Irish programmes explaining:

Each has its particular style and viewpoint. *Ireland Calling* chooses to concentrate on direct telephone links to radio stations and personalities in Ireland and sometimes other parts of the world. The programme is 90 minutes. *Images of Ireland* chooses to reflect Irish cultural activity by way of book reviews, music and advising Aucklanders of Irish activities in the community. Duration is 60 minutes. *Information on Ireland* chooses to inform its audience about the history, and continuing "troubles" in Ireland and to state its members' case against British presence in Ireland. Duration is 8 minutes.

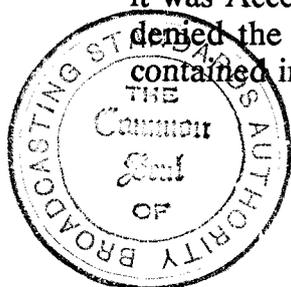
Ms Bresnehan concluded:

Our Society has never resisted people broadcasting contentious views. We do insist that they stay within the laws of New Zealand.

Having read a transcript of the *Information on Ireland* programme broadcast on 8 November 1992, the Authority had no hesitation in describing it as unbalanced. Indeed, the Authority believed that the programme could be described as a diatribe in that it was a denunciation of the role of the British - especially the British troops - in Northern Ireland.

However, the broadcast of an unbalanced diatribe does not inevitably breach the broadcasting standards. Section 4(1)(d) requires that, when controversial public issues are discussed, reasonable opportunities are given to present other significant points of view within the period of current interest. The Authority has decided that the period of current interest depends on the circumstances of each complaint and it would accept, in the case of the on-going troubles in Ireland, that a gap of some weeks is acceptable. However, as the other two Irish programmes broadcast by Access Radio in Auckland did not deal with the politics of Northern Ireland, they could not be described as programmes which might bring balance to the perspective promoted in *Information on Ireland*.

Other aspects of s.4(1)(d) refer to broadcasters making efforts and giving opportunities to respond. Access Radio did not recount any efforts that it had made to promote a programme responding to the *Information* one. Indeed, the Authority doubted whether it was Access Radio's task to do so. The broadcaster also did not record that it had denied the opportunity to any group which had asked to respond to the evident bias contained in the *Information* programme. Apparently, there were no such requests.



The Authority would also note that the provision in s.4(1)(d) is expanded in standard 1.1(i) of the Radio Code of Broadcasting Practice. It requires broadcasters:

- (i) To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature, making reasonable efforts to present significant points of view either in the same programme or in other programmes within the period of current interest.

That standard, cited more frequently by complainants than s.4(1)(d), places the onus on broadcasters to make a reasonable effort to obtain other significant points of view and does not refer to reasonable opportunities.

The reasonable opportunity provision in s.4(1)(d) is relied upon by broadcasters which schedule talkback programmes and which receive complaints about lack of balance. Although some callers may present unbalanced or partial views, openline talkback, the broadcasters maintain, gives others the opportunity to respond.

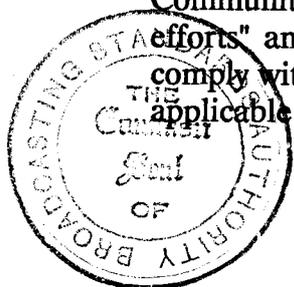
In regard to the Consul General's complaint that the *Information on Ireland* programme broadcast on 8 November was unbalanced, Access Radio took two distinct steps. First, it decided to exercise its right to read future transcripts before broadcast to ensure that the content matched the material proposed when the group had been granted airtime. Secondly, it decided to implement a general policy which had been proposed whereby Access Radio would broadcast a disclaimer of its concurrence, or the concurrence of the other programme presenters, with the views expressed in each item.

The Authority has dealt with the issue in some length to illustrate that s.4(1)(d) as elaborated by standard 1.1(i) of the Radio Code is of questionable relevance to Access Radio, and secondly, that the broadcaster did act responsibly within its internal rules when it received the complaint.

To expand, the Authority has no doubt that the broadcast breached s.4(1)(d) but that the way that provision has been translated into the Radio Code in standard 1.1(i) is unsuitable for Access Radio. The purpose of Access Radio is to provide an opportunity for diverse groups, especially those which may lack access to or credibility with the conventional media, an opportunity to present their points of view. Unlike other broadcasters, the role of Access Radio is not to create programmes but to ensure, in its coordinating role, that opportunities for balance exist.

Although the groups who apply to Access Radio must comply with s.4(1)(d) and not propose illegal activity, each broadcast may well not comply with the Radio Code requirements of balance, impartiality and fairness. In other words, the Radio Code does not provide adequately for the concept of Access Radio.

Having reached that conclusion, the Authority has written to the Association of Community Access Radio Broadcasters, noting that s.4(1)(d) refers both to "reasonable efforts" and "reasonable opportunities", and asking it to draft standards which would comply with the spirit of the requirements in the Broadcasting Act and which would be applicable to broadcasts by community access stations. The Authority acknowledges that



it is an issue the Association has considered in the past but points out that it is now one which requires prompt resolution.

As the broadcast was in breach of s.4(1)(d), the Authority upheld the complaint. Having done so it may make an order under s.13(1) of the Broadcasting Act. In view of the action already taken by Access Radio in Auckland to ensure that the type of broadcast on 8 November is not repeated, the Authority has decided not to impose one on this occasion.

For the above reasons, the Authority upholds the complaint that the broadcast of *Information on Ireland* by Access Community Radio Auckland on 8 November 1992 breached s.4(1)(d) of the Broadcasting Act 1989.

For the reasons set forth above, the Authority does not intend to impose an order.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



3 May 1993

AppendixThe Honorary Consul General of Ireland's Complaint to Access Community Radio Auckland Incorporated

In a letter dated 9 November 1992, Mr Rodney Walshe, the Honorary Consul General of Ireland, complained to Access Community Radio in Auckland about the programme *Information on Ireland* broadcast at 11.15am on Sunday 8 November.

Noting that the programme was scheduled immediately before the programme *Images of Ireland* which he personally sponsored, Mr Walshe complained that *Information on Ireland*:

... expressed strong anti-British sentiments, devoted its content to the civil strife in the North of Ireland and advised listeners seeking information to contact the Provisional IRA at an Auckland PO Box number.

He described the Provisional IRA as an illegal organisation in Ireland and he objected to the association of the two programmes. He held reservations as to whether *Information on Ireland* met broadcasting criteria and said if it continued to be broadcast at the scheduled time, he would stop his sponsorship of *Images of Ireland*.

Access Community Radio's Response to the Formal Complaint

Ms Leona Bresnehan, Station Manager of Access Community Radio Auckland, advised Mr Walshe of the broadcaster's decision in a letter dated 11 November 1992.

She advised that *Information on Ireland* was scheduled at a time which was not its preferred choice but was a time allocated by Access Radio's Broadcasting Operations Committee. Enclosing a transcript of the 8 November broadcast, she pointed out that listeners were not advised to contact the Provisional IRA but that information would be supplied by *Information on Ireland* at the address given.

Ms Bresnehan reported that the management of Access Radio had directed the production of a disclaimer to the effect:

The views expressed by community programme-makers on Access Community Radio Auckland are not necessarily views with which this Access Radio Society agrees, or with which any other community programme-maker agrees.

The preparation of the disclaimer had been a separate issue for the broadcaster and it had now decided to broadcast it at regular intervals, one of which would be the continuity break between the programmes *Information on Ireland* and *Images of*



It was also recorded:

The Society has also written to the group "Information on Ireland" to remind the group of its responsibility under the broadcasting laws of New Zealand and to point out that the broadcast made by the group on 8.11.92 was not of the format described in that group's application for airtime.

The letter to the group was attached and it disclosed that the group was advised of the preparation and broadcast of the disclaimer. Referring to the contents of the item broadcast on 8 November, the broadcaster advised the group that it bore no resemblance to the programme description in the application for airtime. As the broadcaster reserved the right to read all scripts before broadcast, Access Radio said that a copy of each intended script had to be made available before broadcast or, otherwise, airtime would be cancelled.

It reported that the prerecorded item for 15 November had been auditioned and one sentence removed. The letter concluded by emphasising the station's role as a community facility which should be treated with responsibility and respect.

Further Correspondence

Mr Walshe, the Honorary Consul General, in a letter dated 12 November expressed to the broadcaster his disappointment at its actions. He wrote:

We have developed a good listening audience from a largely Irish community to a programme which has a strong cultural and information content which was presented live for one hour each Sunday. You have consciously made a decision to subject this listening audience to a five minute taped programme which supports a terrorist organisation, advocates force over democracy and emphasises religious difference and promotes intolerance. This is incomprehensible.

Expressing his opinion that the *Information on Ireland* programme breached the standards in the Broadcasting Act, he asked why, as it had not conformed with its own format, it was allowed to reap the benefit of the strong audience following for *Images of Ireland* which was "a well prepared and presented cultural programme".

He advised the station that he withdrew that programme, *Images of Ireland*, because the broadcaster had displayed a lack of sensitivity to community broadcasting.

The broadcaster's response, dated the following day, said that a reply had not yet been received from the *Information on Ireland* group to the station's letter of 11 November. It reported on the details of the scheduling which had been involved in providing a time slot for the programme without disrupting numerous other broadcasts and how, as a result, it had been offered eight minutes which was, in fact, shall the time requested. The broadcaster concluded:



When discussing the shortened format, one of the presenters commented that they would have to adapt their style to a largely news-bulletin format. I then gave a detailed explanation of how such a format should be presented. The presenter assured me that the group would follow my advice. In the case of their broadcast on 8/11/92, they did not. The Society has taken action over the matter, as you can see from the copy of our letter to them.

In his reply dated 16 November, Mr Walshe noted his financial involvement in the *Images of Ireland* programme and its development for over a year. Now, he stated, Access Radio allowed a political broadcast by a terrorist organisation to piggy-back on a cultural programme. A disclaimer, he added, was totally inadequate.

Moreover, he argued, it was not balanced to broadcast a news programme next to a cultural one. Feeling personally betrayed by Access Radio's actions, he wrote:

"Images of Ireland" was not broadcast on Sunday and the "Information on Ireland" was. If next Sunday the "Images of Ireland" programme again fails to be broadcast, there is little hope for its future. I will not sponsor a cultural and information programme which is being used as a vehicle to attract an audience to be subjected to an unbalanced political broadcast.

The Honorary Consul General's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with the response to his formal complaint and, in addition to withdrawing *Images of Ireland* on 16 November 1992, Mr Rodney Walshe, Honorary Consul General of Ireland, referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Referring to s.4(1)(d) of the Act which requires that reasonable opportunities be given to present significant points of view when controversial issues are discussed, he said:

The programme I have sponsored comprises items of cultural interest, music, book reviews and information. The preceding programme is a five minute broadcast of radical political views supporting an organisation illegal in Ireland.

There is absolutely no balance in this programming, the listening audience to the programme I sponsor is being subjected to a biased political viewpoint which in no way relates to the cultural tone of my programme and is in my opinion an abuse of programming ethics.

In the Authority's Complaint Referral Form, Mr Walshe stated that the complaint about unbalanced programming had been ignored and, because of a lack of awareness of Irish community sensitivities, he had been forced to discontinue *Images of Ireland*.



Access Community Radio's Initial Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 17 November and Access Radio, in a fax dated 18 November, enclosed a transcript of the *Information on Ireland* programme broadcast on 15 November. It also pointed out that the programming issue raised in the complaint was not a matter of broadcasting standards over which the Authority had jurisdiction.

Referring to the correspondence of which the Authority had received copies from the complainant, the broadcaster advised that it had not yet heard from the *Information on Ireland* group and neither had it advised whether it would broadcast a programme on Sunday 22 November.

Further Correspondence

Upon receiving a copy of the broadcaster's letter of 18 November and an accompanying letter in which the Authority expressed its agreement that scheduling balance fell outside its jurisdiction, in a letter dated 20 November the Consul General disputed that ruling.

Referring to the wording of s.4(1)(d) of the Act, Mr Walshe argued that the balance requirement also applied to a sequence of programmes. He wrote:

Access Radio has admitted piggy-backing as being part of the programming policy, and there is therefore a responsibility to ensure there is balance to ensure conformity with the Act.

There is not a balance, within the period of broadcasting that *Information on Ireland* is broadcast, nor is there balance within the programme itself.

The Authority advised Mr Walshe in a letter dated 26 November that it had confirmed its decision that while a programme's balance was a matter of broadcasting standards, scheduling was not. About the same time Access Radio advised Mr Walshe that it intended to reschedule *Information on Ireland*. Mr Walshe advised Access Radio that he welcomed the decision and hoped that he, as sponsor of *Images of Ireland*, could once again work with Access Radio in an atmosphere of friendship and co-operation. In a letter to the Authority dated 3 December 1992, he wrote:

Naturally, I am extremely pleased that the matter has been resolved and that we can continue to broadcast "Images of Ireland" in our original time spot and not have the programme used as a piggy-back to another which is politically and religiously biased. However I still believe that my original complaint regarding the balance of "Information on Ireland" has not been resolved, and I would be most grateful if the Broadcasting Standards Authority would consider this complaint and advise me of its opinion in due course.



Access Community Radio's Subsequent Response to the Authority

On being advised that the complainant wished to continue with the balance complaint, in a letter dated 8 December 1992 the Authority sought the broadcaster's comments. That letter seemed to have been mislaid as, when commenting in a letter dated 1 March in response to a repetition of the earlier request, Access Community Radio advised that there was no record nor any recollection that it had been received.

With reference to the complaint about the balance of the broadcast of *Information on Ireland* on 8 November, Access Radio's station manager cited the Society's first two stated aims. They are to:

- (a) Provide and maintain a facility for community groups, organisations and individuals to produce and broadcast radio programmes which shall reflect the diverse cultures, lifestyles and perspectives in the greater Auckland region.
- (b) Sustain the greatest possible freedom of speech and expression consistent with responsible broadcasting and within the law.

Explaining that the *Information on Ireland* presenters very clearly expressed their own perspective, the station manager noted that Access Radio in Auckland broadcast three Irish programmes. Each had a particular style and involved, respectively, telephone calls to Ireland during a 90 minute broadcast (*Ireland Calling*), cultural information for Aucklanders of Irish extraction for 60 minutes (*Images of Ireland*), and the case against the British presence (*Information on Ireland*) for eight minutes.

The station manager concluded:

Our society has never resisted people broadcasting contentious views. We do insist that they stay within the laws of New Zealand.

I hope this letter clarifies for the Authority the manner in which our Society operates and helps to resolve this issue of balance.

The Consul General's Final Comment to the Authority

When asked to respond to the broadcaster's reply, in a letter dated 8 March 1993, Mr Walshe maintained that the programme *Information on Ireland* was in breach of the standard requiring the presentation of other significant points of view. It was, he wrote:

Unquestionably a programme expressing a very one-sided political viewpoint and continually implies support for an illegal organisation.

