

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 62/93

Dated the 20th day of May 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

P. CONNOLLY

of Howick

Broadcaster

RADIO NEW ZEALAND

LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

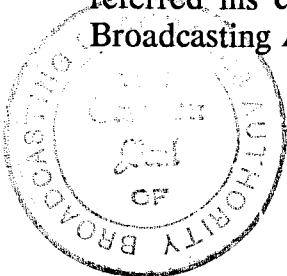
DECISION

Introduction

"Crap paper", "loo-paper", "a lump of that stuff on the toilet paper before it evaporates with the flush", were some of the phrases used by the presenter on *Newstalk 1ZB* when talking about a disputed road on Waiheke Island and the owner of the land at about 7.25am on 11 January 1993.

Mr Connolly complained to Radio New Zealand Ltd that the comments were in poor taste and were unfair to Mr John Spencer, the owner of the disputed land.

RNZ upheld the aspects of the complaint that the comments breached the standards requiring good taste and that Mr Spencer be dealt with fairly but not the aspect that Mr Spencer had not been given an opportunity to present his point of view. In view of the contents of the news commentary, Mr Connolly was dissatisfied both that the complaint had not been upheld completely and with the action taken on the aspects upheld and he referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



## Decision

The members of the Authority have listened to a tape of the comments complained about and have read the correspondence (summarised in the Appendix) which includes a transcript of the item. As is its practice, the Authority has determined the complaint without a formal hearing.

At about 7.25am on *Newstalk 1ZB* on Monday 11 January 1993, the announcer's (Mr Larry Williams) news commentary about the Stoney Batter road issue on Waiheke Island included the phrases loo-paper, crap paper and, with reference to the land owner (Mr John Spencer) who had previously held major pulp and paper interests, "a lump of that stuff on the toilet paper before it evaporates with the flush". Mr Connolly complained that the comments were unfair and in extremely poor taste. He argued that they breached standards 1.1(b) and (e) of the Radio Code of Broadcasting Practice which require broadcasters:

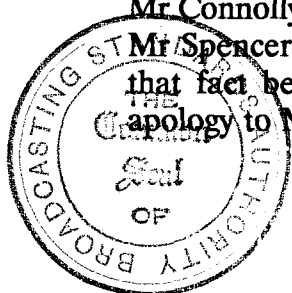
- (b) To take into consideration currently accepted norms of decency and good taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.
- (e) To deal justly and fairly with any person taking part or referred to in any programme.

Explaining the background to the item and the unusual circumstances which had occurred on the morning of 11 January, RNZ upheld the aspects of the complaint that the item breached the good taste and decency requirement of 1.1(b) and the requirement to deal fairly with persons referred to in 1.1(e). It declined to uphold the aspect of the 1.1(e) complaint that people referred to be given an opportunity to respond, pointing out that efforts to obtain Mr Spencer's comments had been unsuccessful.

The unusual circumstances which had occurred on the morning of 11 January were a malfunctioning computer system, the presenter's first appearance on the programme and the absence of a technical producer so that the programme producer was required to do two jobs.

RNZ reported that it had taken action about the broadcast before Mr Connolly's complaint was received. That action had involved interviewing and counselling the producer and the presenter, requiring the presenter's live-to-air pieces prepared during the next 14 days to be discussed with a senior staff member and a reminder to all producers to exercise vigilance in overseeing such comments. To avoid giving the matter further exposure, RNZ added, it had decided that it was undesirable to broadcast an apology.

Mr Connolly referred his complaint to the Authority as RNZ had not acknowledged that Mr Spencer was "grossly wronged" by the "despicable personal attack". He asked that that fact be acknowledged and that appropriate action be taken such as a letter of apology to Mr Spencer. In response, RNZ argued that the complaint had been upheld



under the appropriate aspects of the standards cited and it believed that the action taken was appropriate in view of the contents of the news commentary. It was not, RNZ concluded, a news report.

The Authority began its review of this complaint by examining RNZ's interpretation of standards 1.1(b) and (e). Whereas the former explicitly deals with good taste and decency and the latter refers to fairness, the Authority agreed with RNZ that the former might include aspects of fairness and that fairness under the latter might include the efforts made by the broadcaster to obtain a response from the person referred to. In the circumstances of this particular broadcast, the Authority agreed that the announcer's comments were in extremely poor taste and unfair but that RNZ had made a sufficient effort to obtain Mr Spencer's reply. Furthermore, the Authority concurred with RNZ that upholding a breach of good taste recognised the offensiveness of the statement. The degree of offensiveness, about which Mr Connolly complained when he referred his complaint to the Authority, was a matter to be considered when reviewing the broadcaster's actions on the aspects of the complaint upheld.

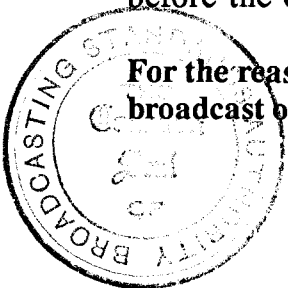
The Authority next focused on the aspect of Mr Connolly's complaint that RNZ's action, having upheld the complaint, was inadequate. The Authority noted the matters raised by RNZ (that it was the presenter's first day with the particular programme, that a technical producer was not in attendance and that the computer had been malfunctioning) and adopted and endorsed RNZ's approach to those matters. That approach was to acknowledge these points but not to use them as an excuse.

The Authority then examined the actions which RNZ had taken. These consisted of counselling the producer and presenter, of having the presenter's news comments reviewed by a senior staff member for a fortnight and of issuing a reminder to all producers emphasising the need for vigilance.

The Authority decided that this range of actions undertaken by RNZ disclosed a serious concern on its part. Moreover, when taking into account the fact that these actions were initiated by RNZ before Mr Connolly's complaint was received, the Authority believed that it showed self regulation to be operating in a way which brought credit to the broadcaster.

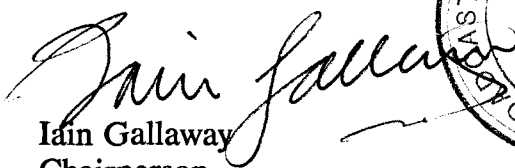
The news commentary, the Authority concluded, was inexcusably crass and tasteless and, indeed, verged on the abusive. However, the Authority believed that the broadcaster had acted responsibly on becoming aware of the broadcast. As a general rule, the Authority does not accept, merely because the broadcast of a correction will raise the issue again, that a gap of some months is an excuse for not broadcasting a correction. It believes that in most cases the correction is some compensation for or provides some balance to the offending broadcast. However, on this occasion, as RNZ has taken responsible and extensive internal action, the Authority concluded that the action begun by RNZ even before the complaint was received was sufficient in the circumstances.

**For the reasons set forth above, the Authority declines to uphold the complaint that the broadcast on *Newstalk 1ZB* on Monday 11 January 1993 breached the aspect of standard**



**1.1(e) of the Radio Code of Broadcasting Practice requiring that a person referred to be given an adequate opportunity to respond and that the action taken by RNZ on the aspects of the complaint upheld was insufficient.**

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



20 May 1992

## Appendix

### Mr Connolly's Complaint to Radio New Zealand Limited

In a letter dated 26 January 1993, Mr P. Connolly of Howick complained to Radio New Zealand Ltd about the comments made by the announcer (Mr Larry Williams) on *Newstalk 1ZB* at about 7.25am on 11 January 1993.

Describing the comments as unfair to the person referred to (Mr John Spencer), and as unnecessary and in poor taste, Mr Connolly said the remarks breached standards 1.1(b) and (e) of the Radio Code of Broadcasting Practice.

The standards require broadcasters, respectively, to take into account currently accepted norms of decency and taste in language in context, and to deal justly and fairly with any person referred to.

### RNZ's Response to the Formal Complaint

RNZ advised Mr Connolly of its Complaints Committee's decision in a letter dated 19 February 1993. It advised that the complaint had been assessed under the two standards nominated but, as the Broadcasting Standards Authority had interpreted the decency requirement in 1.1(b) to include in appropriate circumstances references to people, there was some overlap between the standards cited. In addition, it reported that standard 1.1(e) - just and fair dealing - overlapped with the standards which required the presentation of all sides of a controversial issue.

By way of explanation but not as an excuse, RNZ noted that 1ZB's computer system had malfunctioned on the morning of 11 January and had failed to answer commands. Furthermore, the presenter was doing the programme for the first time and the programme producer was working without the support of a technical producer.

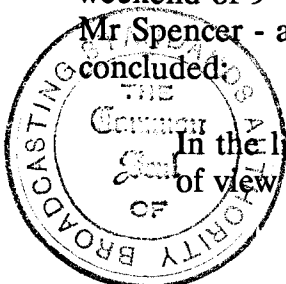
The extra work-load resulting from the technical failures and the emergency efforts required to keep the programme flowing on air was significant.

At 7.23am, RNZ continued, the computer again malfunctioned and the gap was filled with a "news comment" item which, unlike other similar items, the producer had not seen.

RNZ also provided information about the background to the dispute about the road to Stoney Batter on Waiheke Island. A number of parties, including the mayor of Auckland, had been interviewed but Mr Spencer, the owner of the land across which the road passed, consistently declined to comment - including one occasion when he was dialled at home on air one morning. Following activity on the road during the weekend of 9 - 10 January, efforts were made to contact a range of people - including Mr Spencer - and some interviews arranged for the morning of 11 January. RNZ

concluded:

In the light of this coverage and the efforts made to obtain all different points of view and publish them, the Committee was unable to uphold those aspects



of the complaint of unfair dealing not subsumed within 1.1(b).

On the question of the use of the phrases "crap paper", "loo-paper", and "a lump of that stuff on the toilet paper" which were associated with references to Mr John Spencer, RNZ upheld the complaint that they breached the requirement for good taste in language in standard 1.1(b).

RNZ reported that before Mr Connolly's complaint was received, the Operations Manager had learnt of the broadcast, "interviewed and counselled" both the producer and presenter and a senior staff member commented on the presenter's live-to-air pieces for 14 days emphasising areas of potential difficulty. All producers were reminded of the need to exercise vigilance in overseeing such comment although a broadcast apology was considered to be undesirable to avoid giving the matter further exposure.

### Mr Connolly's Complaint to the Broadcasting Standards Authority

Dissatisfied with RNZ's decision in not upholding the aspect of the complaint under standard 1.1(e) that Mr Spencer had been dealt with unfairly and with the extent of RNZ's action on the aspect upheld, Mr Connolly referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Expressing his opinion that Mr Spencer was "grossly wronged" and that it was a despicable personal attack, he disagreed that RNZ was entitled to say what it liked once Mr Spencer had been given an opportunity to respond. RNZ, he continued, had not dealt fairly with Mr Spencer and a letter of apology was appropriate.

### RNZ's Response to the Authority

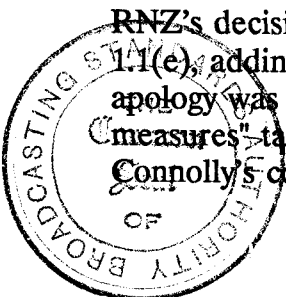
As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 19 March 1993 and RNZ's reply, 25 March.

RNZ repeated the points made to Mr Connolly that there was an overlap between standards 1.1(b) and (e), and that the comments broadcast referred to an on-going event about which Mr Spencer had consistently declined to comment.

It also reiterated:

The Company declined to uphold an allegation of a breach of 1.1(e) in the matter of fair opportunity to be heard on a point of view. However, on what might be termed the "other aspect" of just and fair dealing - that associated with the observance of wider standards of good taste and decency in treatment of or reference to a person - the complaint was explicitly upheld.

RNZ's decision was thus described as a partial upholding of the complaint under 1.1(e), adding that it was upheld in "large measure". Arguing that "a broadcast apology was unnecessary, RNZ pointed to the "extensive remedial, even disciplinary measures" taken as a result of the broadcast. It also objected strongly to Mr Connolly's contention that RNZ could say what it liked as Mr Spencer "didn't play the



game", noting:

The decision conveyed to Mr Connolly is perfectly clear: what was said was not determined to be within the bounds of decency, or good taste, or fair treatment (although there had been then and previously no unfair treatment in the matter of opportunities to put a point of view); and before Mr Connolly's letter was received, disciplinary and counselling action had already been initiated on a wide scale to ensure such a breach was not repeated.

**Mr Connolly's Final Comment to the Authority**

When asked to comment briefly on RNZ's response, in a letter dated 5 April Mr Connolly repeated that he was not connected with Mr Spencer but was acting on his own behalf. Noting that RNZ had not recorded the number of telephone complaints received, Mr Connolly urged the Authority not to be distracted by RNZ's diversionary tactics.

