

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 72/93

Dated the 14th day of June 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

ONE NEW ZEALAND
FOUNDATION INC.

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

The Treaty of Waitangi, its history and implications in contemporary New Zealand were the focus of a programme entitled "The Treaty of Waitangi - Te Tiriti o Waitangi" broadcast by Television New Zealand on TV One at 9.40pm on 5 February 1993.

The One New Zealand Foundation complained to Television New Zealand Ltd as the broadcaster that the programme was biased, lacking in balance and impartiality and in breach of the Television Codes of Broadcasting Practice.

Emphasising that the programme fulfilled an important educational function in enlightening many non-Maori New Zealanders who were ignorant about the Treaty as to the basis for Maori grievances, TVNZ declined to uphold the complaint. Dissatisfied with TVNZ's response, the One New Zealand Foundation referred its complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the programme complained about and have



read the correspondence (summarised in the Appendix). As is its usual practice, the Authority has determined the complaint without a formal hearing. At the outset, one of the members of the Authority, Ms J.R. Morris acknowledged her specialised knowledge of the subject of the Treaty of Waitangi as a member of the Waitangi Tribunal.

The President of the One New Zealand Foundation Inc. (Mr Wally Boyd) complained on its behalf to TVNZ that the broadcast of the programme entitled "The Treaty of Waitangi - Te Tiriti o Waitangi" on TV One on 5 February 1993 at 9.40pm was biased towards a Maori viewpoint, unbalanced and in breach of broadcasting standards. The Foundation argued that by selecting highly articulate speakers to express what it described as the Maori view, the programme was biased in their favour because the opposing view was not put with equal eloquence. It suggested that a balanced programme would have included the views of a representative of the Foundation or someone nominated by it.

TVNZ reported that it had assessed the programme under s. 4(1)(d) of the Broadcasting Act 1989 and standard G6 of the Television Code of Broadcasting Practice. Section 4 (1)(d) reads:

4. (1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are 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;

Standard G6 of the Television Code of Broadcasting Practice requires broadcasters:

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

TVNZ explained that the programme deliberately approached the topic from a Maori perspective in the hope that it would spur public debate. It rejected the One New Zealand Foundation's allegations that the Maori speakers were radicals who made inflammatory statements, suggesting that that interpretation was a subjective one. It justified the stance taken in the programme, explaining that it clearly spelled out where the roots of Maori discontent lie. It wrote:

The [TVNZ Complaints] Committee felt that to the interested Pakeha the whole approach was refreshingly educational, and salutary. As Dr Jane Kelsey observed near the beginning of the programme, the Maori story has not before been told - a point reinforced by Robert Consedine when he suggested that most Pakeha simply do not know the history of the Treaty.

TVNZ believed that despite the focus on the Maori perspective, the programme was



balanced because it contained comments made by representatives of the Crown. Further, it noted that the requirement for balance in s.4(1)(d) of the Broadcasting Act was met if significant points of view were presented "within the period of current interest". TVNZ submitted that in the case of the debate about the Treaty, the period of current interest spanned many years and was on-going. It regarded the programme as a welcome addition to the public debate.

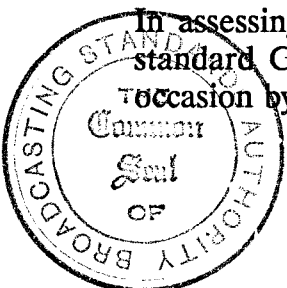
In the absence of specific examples, TVNZ disagreed that the programme was narrow and inadequate, and rejected the Foundation's argument that some remarks were inflammatory.

The Authority prefaced its discussion with the observation that it was now acknowledged that the Treaty is an important constitutional document for New Zealand. It is an agreement between the Crown and Maori and, the Authority noted, it had only been in recent years that the Crown had accepted, and attempted to redress, breaches in the agreement between the parties. It appeared to the Authority that the programme attempted to present a view of the Treaty principally from the perspective of representatives of the signatories - the Maori people and the Crown. Their perspectives were investigated in some depth.

The first part of the programme contained street interviews with a cross-section of New Zealanders, as well as informed comment from some non-Maori who were very familiar with the issues. The Authority agreed with TVNZ that this part of the programme revealed that a number of non-Maori New Zealanders were ignorant about the Treaty. The Authority believed that the views presented were probably an accurate reflection of opinions, noting that the segment presented a balance of views because some of the speakers were reasonably well-informed while others knew very little about the issues. Moreover, some speakers accepted that there had been Treaty breaches which should now be remedied, while others believed that the Treaty has no relevance today. The second part of the programme presented the views of prominent Maori speakers, whose views, the Authority noted, were presented eloquently and forcefully. The Foundation suggested that this was because the Maori speakers were carefully selected and had had the opportunity to prepare, whereas the non-Maori speakers had not. The Authority believed that the Maori people interviewed were articulate because the Treaty was an important document in their lives. It noted that three of the non-Maori speakers (Dr Jane Kelsey, Robert Consedine and Geoff Murphy) included in the first segment were equally articulate and well-informed and that these longer interviews contained information and presented significant opinions. It was of the view that all of those speakers probably had some opportunity to prepare.

The third part of the programme focused on the agreement made in the Treaty, while the fourth part gave the perspective of the Crown. The final segment contained some views of Maori people on how they saw the future of the Treaty.

In assessing the complaint against the standards cited, the Authority considered that standard G6 of the Television Code of Broadcasting Practice was subsumed on this occasion by section 4(1)(d) of the Broadcasting Act 1989.



In rejecting the Foundation's argument that the programme was not balanced because it did not offer the sorts of views that the Foundation itself propounded, a majority of the Authority reiterated that the Treaty of Waitangi was an agreement between Maori and the Crown and therefore it was appropriate that the programme focused on the views of those two parties. It noted that for the most part there was accord in the views of those two parties: recognition of the status of the Treaty; recognition that there had been breaches in the agreement; and undertakings to continue to seek remedies for the breaches.

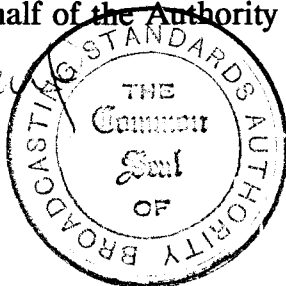
A minority whilst acknowledging that the period of current interest in the Treaty of Waitangi was infinite, considered that, in a programme of this duration which provided such a depth of perspective, the opportunity should have been available to question some aspects of the Treaty, such as its validity and its significance in 1993. It did not, however, accept that this should necessarily have been in the person of a representative or representatives of the One New Zealand Foundation. The minority acknowledged the contributions made by Ministers of the Crown and representatives of Maori tribes, numerous though they were and some of whom spoke on more than one occasion, but it questioned whether some balance should not have been provided by spokespersons in lieu of or with views opposing those of Dr Kelsey and Messrs Consedine and Murphy.

The majority of the Authority agreed with TVNZ that the period of current interest in this case spanned an indefinite period: that the debate had occurred in the past and was ongoing. It observed that every viewer's interpretation of the programme was coloured by their preconceptions and that the programme's intention was to convey information and to provide a depth of perspective not often given. It also observed that while a significant number of people still held the view that the Treaty was unimportant, the programme recognised that there had been a shift in the official view. The programme recognised that official view, which in general principles is largely in accord with the "Maori view". The majority acknowledged that statements from some of the Maori speakers were provocative, but believed that they were still legitimate given the context of the programme. A majority of the Authority decided that the programme was not in breach of s.4(1)(d).

For the reasons set forth above, a majority of the Authority declines to uphold the complaint that the broadcast by Television New Zealand Ltd of the programme "The Treaty of Waitangi - Te Tiriti o Waitangi" on 5 February 1993 breached section 4 (1) (d) of the Broadcasting Act 1989.

Signed for and on behalf of the Authority

Iain Gallaway
Iain Gallaway
Chairperson
 14 June 1993



Appendix

One New Zealand Foundation Inc's Formal Complaint to Television New Zealand

In a letter dated 21 February 1993, the president of the One New Zealand Foundation Inc, Mr Wally Boyd, complained to Television New Zealand that the programme entitled "The Treaty of Waitangi" shown on TV One on 5 February at 9.40pm was biased in favour of a Maori viewpoint and was thus in breach of broadcasting standards. One New Zealand claimed that the Maori speakers had been carefully selected and had had the opportunity to prepare their statements. In contrast, the non-Maori participants had not. It claimed that the documentary was inadequate and narrow and that some remarks made by the Maori participants were inflammatory. It also alleged that New Zealanders qualified to give an alternative viewpoint were excluded.

Copies of letters to the Race Relations Conciliator and to the Listener about the same programme by two members of One New Zealand were enclosed.

TVNZ's Response to the Formal Complaint

TVNZ advised the One New Zealand Foundation of its Complaints Committee's decision in a letter dated 10 March 1993.

It reported that it had considered the complaint in the context of s.4(1)(d) of the Broadcasting Act 1989 and standard G6 of the Television Code of Broadcasting Practice. It noted that One New Zealand had not provided specific examples to support its allegations but that it had proceeded to assess the complaint by adopting a broad approach to the programme.

The programme, TVNZ continued, was in five parts.

The Committee noted that the first part revealed that many Pakeha remain ignorant of the Treaty and of the reasons for Maori discontent. The sequence of street interviews canvassed a wide range of opinions but left the viewer with the impression that the Pakeha generally knew little detail about the Treaty - and perhaps feared it a little. Hence Pakeha reluctance to move from the status quo.

It then went on to describe how these views contrasted with the highly articulate comments from the Maori participants. TVNZ noted:

...rarely, if ever, before has it been so clearly spelled out where the roots of Maori discontent lie.

Despite the fact that the topic was approached from a Maori perspective, TVNZ continued, the programme was balanced because it contained comments from the Prime Minister, and the Ministers of Justice and Maori Affairs. It observed that the



Broadcasting Act requires that significant points of view must be presented either in the same programme or "within the period of current interest". In this case, it noted that the period of current interest has been with us for many years and is on-going. It concluded that this programme was a welcome addition to the public debate and that no breaches of the standards had occurred in the broadcast of the programme.

One New Zealand's Complaint to the Broadcasting Standards Authority

In a letter to New Zealand On Air dated 27 February 1993, the One New Zealand Foundation argued that the programme was biased in favour of a Maori viewpoint because carefully selected speakers had presented their point of view whereas the European speakers had not. It argued that the appearance of the government representatives did not redress the balance.

The Foundation alleged that the programme was unreasonably loaded with Maori radicals who made statements contrary to the spirit of the Treaty. It requested an opportunity to present a balanced viewpoint. Literature from the Foundation was enclosed.

In the Complaint Referral Form addressed to the Authority and dated 2 April, the Foundation complained that the programme was heavily loaded with Maori radicals, some of whom made inflammatory statements. It suggested that a balanced programme which included European New Zealanders, preferably nominated by it, should be produced.

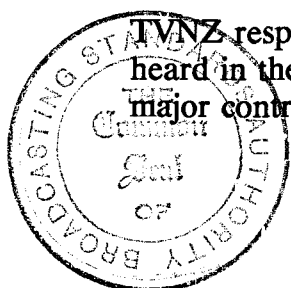
TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 5 April 1993, and TVNZ's reply, 13 April.

At the outset TVNZ observed that it was difficult to determine what exactly One New Zealand objected to because it did not identify specific areas of concern. It regarded the Foundation's suggestion that the Maori speakers were radicals who made inflammatory statements as a subjective one. It observed that the programme looked at the Treaty from a Maori perspective, in the hope that it would spur public debate.

It defended its approach of investigating the subject from the Maori perspective and argued that it was within the requirements of s.4(1)(d) of the Broadcasting Act which requires reasonable efforts to be made to present significant points of view within the period of current interest.

TVNZ responded to the Foundation's argument that articulate Pakeha were not heard in the programme, pointing out that in addition to the three Ministers, three major contributors to the debate were Pakeha.



It concluded by observing that programmes such as this make a positive contribution to national understanding of the issues involved and therefore have an important role in diminishing tensions and misunderstanding.

One New Zealand Foundation's Final Comment

When asked for a brief final comment, in a fax dated 22 April 1993, the One New Zealand Foundation repeated that the programme was unbalanced. Noting that TVNZ had admitted the programme was biased from the Maori perspective, the One New Zealand Foundation argued that such an important and controversial issue should have been handled with prudence and balance.

Further, One New Zealand argued, the programme excluded ordinary knowledgeable New Zealanders and expressed only the radical Maori viewpoint. It noted that the programme unfairly emphasised wrongs, and, in order to be fair, it should have given the same time to aspects of the Treaty that have been honoured. It concluded by seeking an opportunity for a balancing view to be aired.

Accompanying the fax were two editorials from *The Evening Post*, a letter from a member of the organisation about the programme and a copy of the One New Zealand Foundation charter.

