

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 82/93

Dated the 21st day of July 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR R.J.G. EDWARDS

of Canberra

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

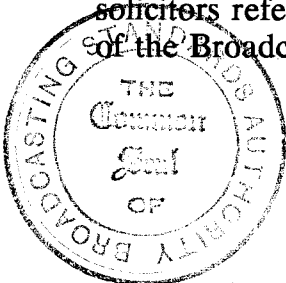
DECISION

Introduction

The tendering processes for major contracts to modernise the air safety systems in New Zealand and Australia were dealt with in items on *Tonight* broadcast on Television One at 10.30pm on 16 and 17 November 1992. The item on 16 November examined the tendering for the New Zealand calibration system won by an Australian bidder and the 17 November item investigated the letting of a radar contract for the entire Australian airways operation.

Dr Edwards' solicitors advised Television New Zealand Ltd that both programmes referred to Dr Edwards and contained statements and implications that were inaccurate. On Dr Edwards' behalf, they then complained formally that the items were inaccurate, lacked balance and treated him unfairly.

Referring to Parliamentary material and other information gathered by its reporters, TVNZ maintained that the broadcasting standards had not been breached and it declined to uphold the complaint. Dissatisfied with TVNZ's decision, Dr Edwards' solicitors 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 items complained about and have read the correspondence (summarised in the Appendix). They have also read transcripts of both items supplied by the complainant. As is its practice, the Authority has determined the complaint without a formal hearing.

Dr Edwards' solicitors complained to TVNZ about items broadcast on successive nights on *Tonight* in November 1992 which investigated in some depth the tendering processes for major contracts to modernise the air safety systems in New Zealand and Australia. The items mentioned a number of the people involved and both had referred to and shown pictures of Dr Edwards noting that, because he had changed jobs during the period covered in the broadcast, he had been involved with the letting of the contracts in both countries.

The items reported that the tendering processes in Australia and New Zealand were being investigated by Parliamentary committees in each country and the report from each was expected within a few weeks. The items included interviews with politicians from each country.

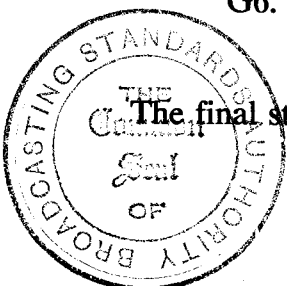
The Complaint

When TVNZ declined Dr Edwards' solicitor's request after the screening of the items to broadcast an apology, a formal complaint about the broadcasts was made. The broadcast of three specific issues were noted which, it was said, breached standards 1, 4, 6 and 12 of the Television Code of Broadcasting Practice. In elaborating on the details of the complaint, the solicitors alleged, first, that it had been inaccurate to describe Dr Edwards as the head of the Airways Corporation team in New Zealand which evaluated the tenders. Mr Rick Wittmann had been the project manager. Secondly, it had been wrong to describe the contract for the first year of the Australian CAA flight inspection as over budget. The figure of \$1.7 million had been set which included \$400,000 for non-routine flight inspections. Thirdly, it was inaccurate to state that Dr Edwards had headed a project which awarded radar contracts in New Zealand to the French company Thomson CSF as, at the time, he had not been involved in the modernisation process.

The first three standards allegedly breached (subsequently renumbered) require broadcasters:

- G1. To be truthful and accurate on points of fact.
- G4. To deal justly and fairly with any person taking part or referred to in any programme.
- G6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

The final standard reads:



G14. News must be presented accurately, objectively and impartially.

The Broadcaster's Response

In its response, TVNZ pointed out that each of the projects had been the subject of a detailed Parliamentary enquiry - one in New Zealand and the other in Australia - and then proceeded to discuss each of the complainant's three points. In regard to the first, it maintained that Dr Edwards had headed the flight tender evaluation team, that Mr Wittmann reported to him directly and that, as the relationship between the pair had become increasingly strained, Dr Edwards adopted a more "hands-on" role.

As for the cost of flight inspection for the first year, the second point, TVNZ maintained that the publicly available figures referred to a cost of \$13 million over ten years and made no mention of allowances for non-routine flight investigations. TVNZ added that despite its request for all material from the Parliamentary Select Committee, the report from Southpac (which accompanied the complaint) was not included at that time and, until this complaint, it had not been made available to the media.

Regardless of whether the figure of \$1.3 million for the first year was in dispute, TVNZ argued that the item which was broadcast had focused on the quality of the Australian equipment and that the cost comparison between the competing tenderers had been the last point raised on the issue.

The third point referred to Dr Edwards' role in awarding the New Zealand radar contracts to Thomson CSF and TVNZ acknowledged that the statement which was broadcast had been misleading. In place of the reference to Dr Edwards as the person "who'd led" the project, it should have said that he led the group "which had previously awarded the contracts". The item, TVNZ continued, had been trying to demonstrate Dr Edwards' knowledge and relationship with Thomson CSF.

TVNZ concluded by maintaining that, possibly apart from the misleading impression on point 3, the items had dealt with Dr Edwards fairly and Dr Edwards had been given "every opportunity" to have his views and comments reported fully. The Authority was urged to adopt the following approach:

With respect we have concern that argument over matters of comparatively minor detail within these items will obscure the essential truth of what was a substantial and worthwhile journalistic investigation. While not wishing to suggest for a moment that the matters raised by Dr Edwards are unimportant, we do urge the Authority to look at the items as a whole and consider whether the public were well-served by the information contained therein.

Further Correspondence

In response, Dr Edwards' solicitors referred to the three points in dispute. First, they maintained that Mr Wittmann had day-to-day responsibility as project manager for



evaluating the tenders. As for the budget figure, the solicitors argued that TVNZ had reported an approximate average figure as the actual annual figure. They expressed surprise that TVNZ had not obtained a copy of the Southpac report from the Select Committee as it had been central to the Airways Corporation's submission and to its decision to accept the Australian tender. Further, it was recorded that the report was included in the Select Committee's published record which had been made available to the public when its report was released.

In regard to the Thomson CSF contract, the solicitors said TVNZ now acknowledged that the item had been "incorrect and misleading" on that point, adding that it was irrelevant whether Dr Edwards had any contact with Thomson CSF. The solicitors maintained:

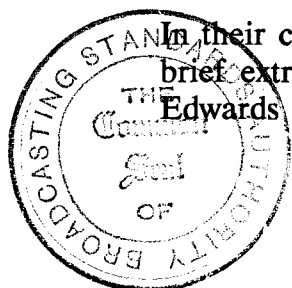
The Authority should not lose sight of the overall impression which the two programmes were calculated to produce: Dr Edwards' close involvement in three contracts (two involving Thomson CSF, the other ACAA) which was somehow suspicious. Given the weak (and in some critical respects non-existent) factual premises, the damage caused by this impression is real and deserves appropriate condemnation by the Authority.

As a separate point when the complaint was referred to the Authority, Dr Edwards' solicitors said that he had been unable to respond to TVNZ's enquiries at the time the items were being prepared as they were broadcast after the Select Committee had completed its lengthy investigation but before it published its report. The solicitors wrote:

In those circumstances, a public agency (here, the Airways Corporation of New Zealand Limited) and all those associated with it (here, Dr Edwards, as a former senior Airways executive) were naturally constrained from making any comment prior to the release of the report. In those circumstances, it was an empty gesture for TVNZ to invite Dr Edwards to comment on any broadcast which preceded the Select Committee's report. There can be no objection to an item which records that an inquiry is coming to an end and a report is imminent, but these items went substantially beyond that.

Pursuant to the requirements of natural justice, the Authority makes available to the parties the material it receives from the other party to the complaint and any material received from any other source. Following this policy, the Authority supplied TVNZ for its information a copy of Dr Edwards' "Final Comment". On this occasion, the complainant's "Final Comment" evoked a lengthy response from TVNZ. Dr Edwards' solicitors, upon receipt of TVNZ's reply, let the Authority have a brief response which, in turn evoked a brief reply from TVNZ and the final correspondence was a very short note by way of a second final comment from Dr Edwards' solicitors. (That correspondence is summarised in the Appendix).

In their comprehensive response to Dr Edwards' first final comment, TVNZ attached brief extracts from the Select Committee's report in which it was recorded that Dr Edwards had "overall responsibility for the tendering process". The report also cast



doubt about some of the calculations in the Southpac cost-benefit report. The Authority would note at this stage that TVNZ, while it has explained that it did not have access to the Southpac report at the time of the broadcasts in November 1992, also did not have access to those criticisms as they were contained in a report which was published in December 1992. As for the aspect of the complaint which described Dr Edwards as having responsibility for previous dealings with Thomson CSF, TVNZ again acknowledged the "inadvertent omission" of the word "previously" but added that the previous contact between Dr Edwards and Thomson CSF was relevant to his duties with the Australian CAA.

TVNZ also stressed that the timing of a broadcast was a matter of editorial discretion and added, providing that legal constraints were met, it was vital in a democracy to report developments in an on-going story. Moreover, it argued that Dr Edwards, by withholding co-operation, had been attempting to muzzle the reporter.

In their reply, Dr Edwards' solicitors questioned the value of the extracts from the Select Committee's report, describing some of the conclusions as questionable, and were scornful of TVNZ's allegations that Dr Edwards' unco-operative attitude amounted to muzzling the media. That allegation, they continued, amounted to an effort by TVNZ to divert the Authority from its focus on a serious breach of the broadcasting standards. In response, TVNZ emphasised that Dr Edwards had been given every opportunity to assist in its enquiries which dealt with a matter "of considerable public interest". In their final comment, Dr Edwards' solicitors maintained that it was permissible, contrary to TVNZ's insinuation, for a party to contest a Select Committee's report.

The Select Committee Process

To ensure that it had a complete understanding of the role played by the Select Committee process, the Authority asked the relevant Select Committee as to the rules which applied to the parties. It must be borne in mind that the programmes complained about were broadcast after the Select Committee had finished a 20 month enquiry but before the release of its report. The broadcasts included comments from an interview with the Select Committee's chairperson who spoke about the Committee's task and its process. He did not disclose the Committee's findings.

The Authority was advised by the Transport Select Committee clerk that as two of the people who were involved in the enquiry had initiated defamation proceedings against another involved person, the Committee had resolved to hear much of the evidence in private to avoid prejudicing the outcome of the defamation action. At the time of the broadcast of the items by TVNZ, a limited number of submissions were public and they mainly related to the Committee's interim report on aviation navigation aids.

The Select Committee advised:

The committee's advice was sought by another witness after being approached by Television New Zealand Limited when the documentary was being made. The chairman told the witness that although the inquiry was still before the committee,



it did not mean that comment could not be made about the issues being canvassed by the inquiry. It was, though, inappropriate to identify those views as having been directed to a select committee unless they were in the public domain (ie the submission which contained them had been released.). A cautious approach to the media was suggested in regards to the inquiry as the issues were so interlinked with the committee's inquiry.

As for the Southpac cost-benefit report, the Committee advised that that report, although referred to in the public evidence, had been provided in private and was not released to the public until the Committee presented its report on 23 December 1992. However, the Committee added, as the study had been created for some other reason than the Committee's inquiry, it was not confidential to the Committee.

The Three Aspects of the Complaint Referred to the Authority

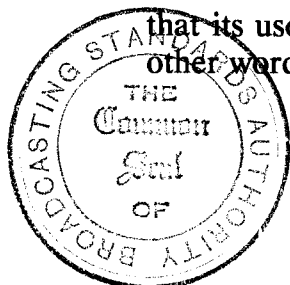
(i) "Heading" the evaluation team

In the absence of evidence which would prove that TVNZ was conclusively correct or incorrect in describing Dr Edwards as "heading" the team in New Zealand which evaluated the tenders for the calibration system, the Authority decided it was a matter to be determined on the basis of common sense. In taking that approach, it also took into account the extract from the Select Committee report provided by TVNZ in which Dr Edwards was described as the person with "overall responsibility for the tender process". However, as the Select Committee report was published in late December 1992 and the broadcasts complained about had occurred more than one month earlier, the Authority noted that the report had not been TVNZ's source of information but TVNZ independently had reached a similar conclusion.

TVNZ also based its conclusion on the Airways Corporations's submission to the Select Committee and quoted several excerpts which referred to Dr Edwards' supervisory role.

If a precise or technical definition were to be applied to the term "heading" a project, it could be argued that the responsibility lay with the Chief Executive and Board. However, making use of common parlance, the Authority took the term to mean someone who apparently had responsibility internally and who knew of and was involved in major discussions regarding the process. However, even when adopting this approach, the Authority was not aware of the internal procedures employed by the Airways Corporation and whether day-to-day responsibility was actually vested in Mr Wittmann or Dr Edwards, or indeed the latter's supervisor, and whether the roles changed over time.

Nevertheless, applying common sense to the evidence available to it and because the term is not one carrying technical precision, the Authority was not prepared to conclude that its use by TVNZ in the broadcasts breached any of the nominated standards. In other words, applying TVNZ's phrase, it "was not an unreasonable" term to use.



(ii) The Costs for the First Year

The Authority regarded this aspect of the complaint as being of considerably more importance than the first as it reflected on the quality of the tendering process and perhaps on the competence of the people involved. TVNZ in its broadcast described the cost of \$1.7 million for the first year as a budget "blow-out". The previous annual cost, it said, when the work was carried out by the Ministry of Transport was \$2.2 million. It reported the contract price was \$1.3 million and the savings were thus reduced from \$900,000 to \$500,000.

When this point about the budget "blow-out" was raised in the complaint, TVNZ said that the quality of the equipment used by the tendering parties was the more important point at issue and that the cost of the competing tenders was a subsidiary matter. In its letter to the Authority dated 8 April 1993, TVNZ wrote:

Even if we were to accept that the figure of \$1.3 million for the first year is now in dispute (and we are not sure by any means that that is the case) we point out that the argument highlighted in the item went well beyond costs. As the reporter pointed out, there was serious concern about the quality of the Australian service. The issues of quality was paramount in the story and were raised by the reporter in his item (sic).

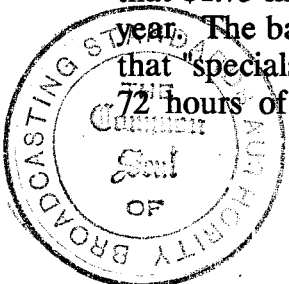
The Authority did not accept that argument. While acknowledging that the quality of the equipment was one focus in the items, in view of the prominence given to the figures even by way of a caption on the screen, it considered that cost was the major topic raised in TVNZ's comprehensive report on 16 November about tenders for the New Zealand calibration system.

TVNZ argued that the figure of \$1.3 million was taken from the then available submission from the Airways Corporation's submission to the Transport Select Committee which stated (para 55) (as included in TVNZ's letter to Dr Edwards' solicitors dated 10 February 1993 and repeated in its letter to the Authority dated 8 April):

It is recommended the Board approve the issuing of a letter of intent to the Australian Civil Aviation Authority on a basis for final negotiations to secure a 10 year contract for flight inspection services at a cost of approximately \$1.3 million per year for New Zealand flight inspection.

There was no mention, TVNZ continued, of any allowance for \$400,000 for non-routine special inspections.

Attached to the complaint to TVNZ, Dr Edwards' solicitors included a cost-benefit report from Southpac which had been presented to the Select Committee which recorded that \$1.75 million (including "special" flights and "callouts") was the budget for the first year. The base figure of \$1.3m was given but the Southpac report (para 4.1) recognised that "specials" and "callouts" might need to be flown. Appendix 1 of that report noted 72 hours of specials would be flown during the first year. A sum of A\$4,017 was



recorded in the report as the cost per hour for specials which, when translated to NZ dollars at the rate of A\$1 for NZ \$0.75 (used in the Southpac report), according to the Authority's calculations provided the sum of \$385,632 for specials during the first year of the contract. In addition, it provided for an annual sum of A\$47,850 for "callouts" which translates to NZ\$64,000.

Dr Edwards' solicitors described the correct budget for the first year as approximately \$1,750,000 - not either of the figures used by TVNZ which were \$1.3m and \$1.7m. The Authority agreed that adding the cost of "specials" and "callouts" to the base figure of \$1.3m does in fact total NZ\$1.75m for the first year.

Accordingly, the Authority accepted that the programme had been inaccurate when it described the figure of \$1.7m for the first year as a budget "blow-out". The next step involved ascertaining whether TVNZ had breached the standards in using that description to describe the situation disclosed.

The first point the Authority considered was the fact that the Southpac report was not publicly available at the time of the broadcast. The Select Committee has advised the Authority that TVNZ should have been aware of the Southpac report as it was referred to in the publicly available submission from the Airways Corporation. Furthermore, its letter to the Authority contained the suggestion that TVNZ would have been able to obtain the report from the Airways Corporation under the provisions of the Official Information Act.

TVNZ countered first, by repeating that it used the \$1.3 million figure taken from the Airways Corporation submission to the enquiry and that there had been no mention of "special" inspections; secondly, that other media reports had used the figure of \$1.3 million and it had not been contested; thirdly, that the material collected from the Select Committee before the broadcast neither included nor acknowledged the Southpac report and that the report now used by the complainant had not been previously made available to the media; and fourthly, that the report was not mentioned by Dr Edwards or the Airways Corporation chief executive (Mr Makin) when they declined to be interviewed by TVNZ. In addition, TVNZ observed that, subsequently, when the Select Committee report was released, it reported that a number of errors were found in the analysis and assumptions employed in the Southpac report.

In view of the apparent conflict in the positions advanced, the Authority has dealt with this issue in some detail as the complainant emphasised it as a central concern while TVNZ regarded it as a minor matter in a broadcast which, at that point it maintained, had focussed on quality not cost.

The Authority accepted that TVNZ did not have ready access to and, indeed, was probably not aware of the Southpac report when preparing the items complained about. Accordingly, the Authority has given little weight to TVNZ's contention that the Southpac report had a limited validity as it was criticised to some degree in the Select Committee report. At the time of the broadcast, TVNZ not only did not have the Southpac report, but also it did not know of the Select Committee's evaluation of it.



The Authority proceeded by asking the question: should TVNZ have had a responsibility to research further the difference of \$400,000 between what it believed was the budget figure and the actual cost? It is, after all, a difference of 30% and, if correct, merited the "blow-out" label. In the earlier part of the broadcast TVNZ had given the reduction in cost as one of the reasons why the Airways Corporation was established as a State Owned Enterprise. In these circumstances, the Authority concluded that such a massive difference in cost was of major significance and warranted a thorough investigation.

The Authority then considered the question: did TVNZ do everything which could be reasonably expected in the circumstances? TVNZ was unsuccessful in its approach to Dr Edwards and Mr Makin for an interview. The item recorded Dr Edwards' and the Corporation's unwillingness to take part. Although a "no-comment" response can satisfy in some circumstances the requirement which broadcasters have under the standards to show balance and to be fair to named parties, Dr Edwards also had to bear in mind the constraints of Parliamentary Select Committee enquiry. It was particularly pertinent in this case because events relevant to the enquiry had earlier resulted in the owner of a courier service being taken before the Parliamentary Privileges Committee.

While the Authority can appreciate TVNZ's exasperation and the consequent allegation that Dr Edwards was trying to "muzzle" the reporter, his reasons for not co-operating appear entirely sensible in the circumstances. Thus, the Authority was not prepared to accept that Dr Edwards' and the Corporation's lack of co-operation was a sufficient reason to excuse the error. The items included an interview with the Select Committee chairperson who could have been asked about the alleged "blow-out" and his reply - even of the "no-comment" variety - would have shown TVNZ's effort to seek an explanation. As there was no explanation broadcast for the difference in the cost for the first year between the figures said to be the budget and the actual figure, the Authority decided that the omission could have suggested incompetence by, at least, the Corporation.

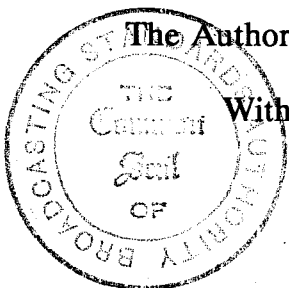
The Authority was not prepared to accept that TVNZ could not be expected to "get it right" on the limited information which was available. Such an explanation might be acceptable if the error was a matter of detail where the addition of the word "approximate" would have avoided the mistake. However, the issue was not a matter of minor detail but a major difference between the two figures.

Dr Edwards' solicitors raised in the complaint the issue of an item being broadcast shortly before the publication of a report from a Parliamentary Select Committee following an extensive investigation. They wrote:

In those circumstances, it was an empty gesture for TVNZ to invite Dr Edwards to comment on any broadcast which preceded the Select Committee's report. There can be no objection to an item which records that an inquiry is coming to an end and a report is imminent, but these items went substantially beyond that.

The Authority agreed with TVNZ's reply when it said:

With respect we do not believe that general questions about the timing of news



reports are a matter for the Authority. This involves editorial discretion. The Authority is asked to consider the content of two particular items and test them against specific codes. We would have concern if news reporters were constrained in any way from reporting ongoing inquiries, events or hearings. We believe it is a vital role of the media in a democracy to report ongoing developments in a news story, so long as that reporting is fair, unbiased and accurate. We also believe that reporting developments in an ongoing story is fair and reasonable, as well as further developments in a story also being given coverage. In this case the release of the final report was also reported by Television New Zealand Limited.

In the circumstances, as TVNZ observed, reporting ongoing enquiries is a fundamental role for the media, so long, as to use TVNZ's words, "that reporting is fair and accurate".

Although the report of the budget might not have been biased or unbalanced, as Dr Edwards' strong support for the tender from the Australian Civil Aviation Authority was reported (and was not challenged), it was not fair to him as the use of the phrase a budget "blow-out" raised a question of competence. Further, as the broadcast maintained the total figure of \$1.3 million was complete, it was inaccurate. Accordingly, it breached standards G1, G4 and G14 of the Television Code.

(iii) Awarding earlier contracts to Thomson CSF

TVNZ acknowledged that the broadcast was misleading when it described Dr Edwards as having headed the project which had awarded radar contracts in New Zealand to the French Company Thomson CSF. The report, it stated, should have recorded that Dr Edwards had led the team which had previously awarded the contracts.

The mistake has never been denied although in its final letter to the Authority, TVNZ said the comment was still relevant as Dr Edwards would have had "useful background knowledge of Thomson CSF" when working for Australia's Civil Aviation Authority. The relevance of this point will be considered further when penalty is assessed.

Summary

On the three points raised by the complainant:

- (i) TVNZ did not breach the standards when describing Dr Edwards as the person who "headed" the Airways Corporation team in New Zealand which evaluated the tenders.
- (ii) To describe the budget figure as being \$1.3 million was inaccurate and in breach of standards G1 and G14 of the Television Code of Broadcasting Practice and to describe the figure of \$1.7 million as a "budget blow-out" was inaccurate and unfair to Dr Edwards and in breach of standards G1, G4 and G14 of the Code.

(iii) To state that Dr Edwards headed the team which awarded radar contracts in New Zealand to Thomson CSF was again inaccurate and unfair and in breach of the



same standards. It was unfair in that it suggested not only Dr Edwards' familiarity with Thomson CSF's business but an actual past business relationship.

For the reasons set forth above, the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of items on *Tonight* on 16 and 17 November 1992 breached standards G1, G4 and G14 of the Television Code of Broadcasting Practice.

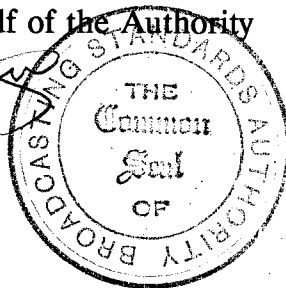
The Authority declines to uphold the complaint that the same items breached standard G6.

Having upheld a complaint or an aspect thereof, the Authority may make an order under s.13(1) of the Broadcasting Act. In deciding whether or not to do so, one of the matters the Authority considers is whether the breach is a major or minor one. TVNZ, while admitting the third aspect of the complaint, reminded the Authority that the items were of considerable public interest and that its reporter had acted properly in gathering and delivering the story. It denied that the items had breached the standards and implied that if they had the breaches were minor. Dr Edwards' solicitors, on the other hand, when maintaining that TVNZ was mischievous to allege that Dr Edwards was "sheltering behind a cloak of sub-judice", argued that "serious and inexcusable breaches" had occurred.

The Authority believed that the broadcasts dealt with matters of public interest and, while not necessarily accusing anyone in particular, made some serious allegations. For example, one person interviewed mentioned that corruption within Airways Corporation had been suggested. The Authority also took into account the fact that the complaint focussed on three specific facts which, although not central to the broad view, were issues of more than minor importance. The matters which were in breach, the Authority decided, added to the item's theme that there was a close relationship between the parties involved in the airways industry. That thrust, however, was involved in much of the other material presented and the parts in breach, while confirming that perspective, were not essential to that view. On balance, the Authority decided that the breaches deserved condemnation but were insufficient to justify the ordering of a correction.

Signed for and on behalf of the Authority

Iain Gallaway
Iain Gallaway
Chairperson



21 July 1993

Appendix

Dr Edwards' Complaint to Television New Zealand Limited

In a letter dated 27 November 1992, the solicitors for Dr R.J.G. Edwards complained to Television New Zealand Ltd about items broadcast on the news programme *Tonight* at 10.30pm on 16 and 17 November. Dr Edwards was described in the complaint as the General Manager of the Projects Division of the Australian Civil Aviation Authority based in Canberra.

Complaining that the programmes contained statements and implications that were both inaccurate and extremely damaging to Dr Edwards, his solicitors requested that corrections be broadcast. The specific factual errors noted included describing Dr Edwards, not Mr Rick Wittmann, as the head of the Airways Corporation team evaluating tenders; incorrectly stating that the CAA flight inspection was over budget in the first year; and describing Dr Edwards as being head of the project which had earlier awarded radar contracts to Thomson CSF in New Zealand.

The solicitors wrote:

You must appreciate that the individual and cumulative effect of these inaccuracies are extremely damaging to Dr Edwards, and that a prompt correction of each of these matters together with an appropriate apology, is the responsible course which you should now follow.

TVNZ declined to broadcast a correction or apology and, following some further correspondence, the solicitors referred the matter to TVNZ as a formal complaint under s.4 of the Broadcasting Act 1989 alleging breaches of standards 1, 4, 6 and 12 of the Television Code of Broadcasting Practice.

TVNZ's Response to the Formal Complaint

TVNZ advised Dr Edwards' solicitors of its Complaints Committee's decision in a letter dated 10 February 1992. It reported that the complaint had been considered under the renumbered standards G1, G4, G6 and G14 which require factual truth and accuracy, that people referred to be dealt with fairly, that broadcasters show balance when dealing with controversial issues and that news be presented accurately, objectively and impartially.

Elaborating on the background of the items complained about, TVNZ stated:

The programmes studied the tendering and selection process for multi-million dollar contracts which were awarded to modernise air safety systems in both New Zealand and Australia. The first item (on 16 November) looked at the tendering for the New Zealand calibration system resulted in success by an Australian bidder (sic). The second item (on 17 November) investigated the



letting of a radar contract for the entire Australian airways operation.

It noted that Dr Edwards was involved in both projects and that each one had been subject to a Parliamentary enquiry - in New Zealand and Australia respectively.

TVNZ then dealt with the three alleged factual errors contained in the letter of 27 November. With regard to the first about who headed the team evaluating tenders, TVNZ referred to evidence given to the New Zealand Parliamentary Select Committee which showed that Project Manager Mr Rick Wittmann reported to Dr Edwards as Technical Services Manager. It concluded that the evidence showed that Dr Edwards had overall leadership and that it was not unreasonable to describe him as heading the team.

The second factual matter raised referred to the budget set for the first year and, again referring to the evidence given by the Airways Corporation to the Select Committee, TVNZ maintained that the figure given in the broadcast was correct. Similarly, in regard to Dr Edwards' role about awarding the contracts to Thomson CSF, TVNZ reported that its sources were emphatic the he was fully involved with the Airways Modernisation Project and had been acting Project Manager for a time.

TVNZ concluded:

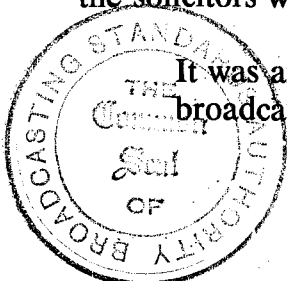
Turning to the codes, the Complaints Committee was satisfied that the "Tonight" team had sufficient evidence to back up the facts related in the programme and that therefore there had been no breach of the truth and accuracy provisions (Codes G1 and G14). The Committee believed that there had been no unfair treatment of Dr Edwards or anyone else referred to in the programme so declined to find a breach of Code G4. The Committee also believed that the item represented a fair, balanced and impartial report on a matter of considerable public interest and that no breach of Code G6 occurred.

Dr Edwards' Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 9 March 1993 Dr Edwards' solicitors referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Deferring the issue of whether a formal hearing was appropriate until TVNZ had responded to the complaint, Dr Edwards' solicitors raised a question about the practicality of inviting him to comment at the time the items were broadcast. It was pointed out that he was constrained from commenting because the Parliamentary Select Committee investigating the issues had yet to report. In those circumstances, the solicitors wrote:

It was an empty gesture for TVNZ to invite Dr Edwards to comment on any broadcast which preceded the Select Committee's report.



The question was also asked whether TVNZ's items were appropriate as they had dealt with the substance of the enquiry - not only its procedure.

In regard to the three factual matters which had been raised in the formal complaint, Dr Edwards' solicitors maintained that Mr Rick Wittmann was primarily responsible for evaluating the tenders. TVNZ's argument that as Mr Wittmann reported to Dr Edwards, then the latter headed the project, was described as specious. As for the budget figure for the first year, Dr Edwards' solicitors maintained that the figure was \$1.7 million and enclosed as evidence a cost-benefit analysis from Southpac which had been provided to the Select Committee.

Moreover, Dr Edwards' solicitors insisted that he did not head the project which awarded radar contracts to Thomson CSF in New Zealand, adding that he was not involved with the Airways Modernisation Project until after the contract had been signed with Thomson CSF in October 1988.

TVNZ's Response to the Formal Complaint

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 10 March 1993 and TVNZ's reply, 8 April.

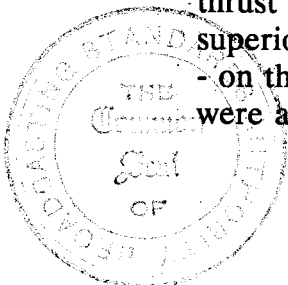
In regard to the complaint about who had headed the team evaluating the tenders for the New Zealand calibration system, TVNZ maintained that Dr Edwards instructed Mr Wittmann on how the evaluation should be handled and as their relationship became strained, Dr Edwards appeared to take a more "hands-on" role.

As for the complaint that the item alleged that the CAA flight inspection was over budget in the first year, TVNZ referred to two figures released to the public both quoting \$1.3 million, adding that they had not been disputed at the time. The Southpac report, now cited by the complainant, had not been made available to the reporter by the Select Committee at the time the items were prepared and, TVNZ added:

We emphasise that the Southpac report, now being quoted by the complainant in support of this formal complaint, has not before now been available to the news media.

Even if the figure of \$1.3 million was now in dispute, TVNZ maintained that the items which were broadcast were not confined to questions of cost but had also raised the question of quality. Indeed, TVNZ continued, the issue of quality was paramount in the story. As the final matter on this point, TVNZ stated:

Respectfully we suggest that the substance of the debate remains sound. The thrust of this part of the item was the view that the CAA were financially superior and whether this claim is correct. At the time the item was broadcast - on the basis of information then available to the news media - the figures were accurate. Even if there is some dispute about the figures now (and we



remain unconvinced) the thrust of the item is not significantly affected.

The third complaint alleging factual inaccuracy related to Dr Edwards' role when the radar contracts were awarded to Thomson CSF. TVNZ accepted that the script was misleading to suggest that Dr Edwards led the project which avoided the contracts. It should have said that he led the project which had previously awarded the contracts. TVNZ added:

What the item was trying to demonstrate at this point was Dr Edwards' knowledge of, and relationship with, Thomson CSF. This knowledge and relationship does not seem to be in dispute between us and the complainant for he doesn't take issue with the comments in the item from Edwin Matiuk of Siemens Plessy who says:

He (Dr Edwards) of course knows Thomson well. He was involved with Frank (Baldwin) in New Zealand when Thomson won a similar system in New Zealand.

In relation to the aspects of the complaints that Dr Edwards had been treated unfairly (standard G4) or that the item was unbalanced (standard G6), TVNZ maintained that, with the possible exception of the third factual point noted above, the item had not treated Dr Edwards unfairly. TVNZ concluded:

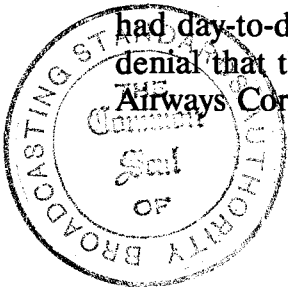
Television New Zealand reported accurately the information made available to it from a wide variety of sources, including that from the Select Committee. Dr Edwards was given every opportunity to have his views included, either in an official, or an "off-the-record" basis, and his comments were included and reported fully.

Pointing out that the Select Committee's report, when released, was reported on *One Network News* on 23 December, TVNZ said that it did not believe that a major journalist investigation which served the public well should be dismissed on matters of "comparatively minor detail".

Dr Edwards' Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 23 April 1993 Dr Edwards' solicitors replied to each of the three points raised in the complaint.

With regard to the management of the tendering process, the solicitors repeated that Mr Wittmann (not Dr Edwards) had been responsible for supervising and coordinating the technical and financial evaluation of the tenders. While Mr Wittmann reported to Dr Edwards and complied with Dr Edwards' instructions, he had day-to-day responsibility for the project. The solicitors reported Dr Edwards' denial that the instructions he issued involved the wording of the reports for the Airways Corporation Board.



The contract price was the second point in contention and the solicitors said TVNZ claimed that it had "got it right" on the information available. In reply, the solicitors said first that TVNZ had reported an approximate annual figure as an actual annual figure. Secondly, they questioned whether TVNZ's excuse was sufficient to excuse it from the obligation to be truthful, accurate and objective on points of fact. Thirdly, they maintained it was irrelevant that other media had also reported the incorrect figure. Lastly, they expressed their surprise that TVNZ had not requested the Southpac report from the Select Committee as it was central to the Airways Corporation's decision to accept the Australian tender and was referred to frequently in the Corporation's submission to the Committee.

As for the third point about Dr Edwards' role in awarding the contracts to Thomson CSF, the solicitors observed that TVNZ now accepted that the item had been misleading and continued:

That being so, it is irrelevant whether Dr Edwards had any contacts with Thomson CSF. The Authority should not lose sight of the overall impression which the two programmes were calculated to produce: Dr Edwards' close involvement in three contracts (two involving Thomson CSF, the other ACAA) which was somehow suspicious. Given the weak (and in some critical respects non-existent) factual premises, the damage caused by this impression is real and deserves appropriate condemnation by the Authority.

The solicitors concluded by noting that TVNZ had not commented about the general point about inviting comment and broadcasting an item about a major inquiry shortly before the release of the report. They invited the Authority to consider that matter further.

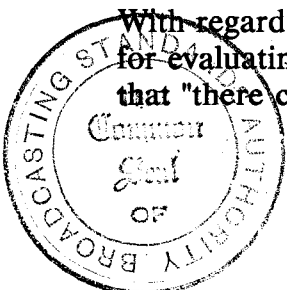
TVNZ's Response to Dr Edwards' Final Comment

In view of some of the extra comment made to the Authority by Dr Edwards' solicitors, in a letter dated 14 May 1993 TVNZ offered additional material which, it said, had been checked with its lawyers.

TVNZ began by noting that the *Tonight* items recounted a lengthy and complex enquiry and that the primary aim had been to inform viewers of the broad issues being addressed. It then said that the issues raised in the complaint were issues considered by the Select Committee and it enclosed for the Authority the relevant pages from the Committee's final report entitled "Report of the Transport Committee on the Inquiry into Contractual Arrangements for the Flight Inspection of Aviation Navigation Aids".

TVNZ proceeded to discuss Dr Edwards' solicitor's letter of 23 April and, while doing so, re-emphasised the points made in its letter to the Authority dated 8 April.

With regard to the aspect of the complaint about who had headed the project team for evaluating the tenders for the Airways Corporation in New Zealand, TVNZ said that "there cannot be a shadow of doubt" that Dr Edward was the superior party.



Further, Mr Rick Wittmann, as project manager, contended that he had been told by Dr Edwards how to structure his reports and which matters should be emphasised. Paragraphs 4.07, 4.08 and 4.09 of the Select Committee report were cited to record that after Dr Edwards was convinced that the Australian CAA tender was the most appropriate, Mr Wittmann was instructed to prepare the evaluation report.

The second issue raised by the complaint was the contract price and TVNZ denied the complainant's contention that, as it only had access to limited information, it could not be expected to get it right. TVNZ maintained that the overall thrust of the items was accurate and that had been confirmed by the enquiry's final report. After quoting paragraphs 1.32, 4.71 and 4.72, TVNZ said that the enquiry concluded that the Southpac cost-benefit study was in error. It cited paragraphs 5.13.

- 5.13 The investigation of the cost-benefit study identified several errors in the analysis and in the assumptions upon which the study was based. Without exception, the Committee found that the errors biased the financial analysis against the Beechcraft tender and in favour of the ACAA tender. If these errors had not been made, an accurate appraisal made of the Pacific flight inspection contracts, the cost-benefit analysis would have conclusively shown the Beechcraft tender to be the lowest tender.

TVNZ added:

The conclusion highlighted that it was the management of the tender process which indicated a lack of competence on the part of the Airways Corporation.

...

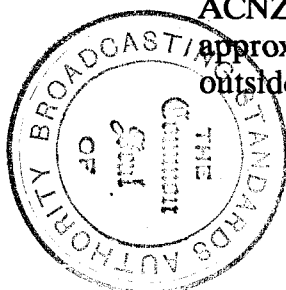
In summary, the view of Dr Edwards (through his solicitors) that even a minor discrepancy in the item constitutes a breach of the code, should be placed in context. The dispute over the costing was dealt with at length in the Select Committee's final report.

TVNZ quoted the Committee's overall conclusion:

- 5.110 The Committee's investigation found that the Beechcraft tender costs in the cost-benefit study had been overstated by NPV \$1.568 million and the ACAA tender costs understated by \$240,000 as a result of computational errors and incorrect cost assumptions.

After quoting further material from the report, TVNZ stated:

Without being privy to details of a \$450,000 "special budget" costing in the ACNZ deal, we could reasonably be expected to conclude that, even by approximation, \$1.7 million for the first year's calibration services was well outside the \$1.3 million tendered by the Airways Corporation.



We believe that the use of the word "approximate" would refer to variations of a few thousand dollars in the cost - not to a variation of \$400,000! We believe that Television New Zealand's use of the word "average" would suggest a slight variation would be allowable. We cannot accept that this was an error.

TVNZ also maintained that the Southpac report was not available at the time the items were prepared, adding that the Select Committee Secretary had confirmed that the Southpac report had been withheld because of legal action between some of the parties involved in the enquiry.

The third issue was Dr Edwards' role when the radar contract in New Zealand had been awarded to Thomson CSF. TVNZ began by acknowledging the "inadvertent omission" of the word "previously" in the item. However, it added, the previous contact between Dr Edwards and Thomson CSF was relevant to his duties with the Australian CAA.

As for the complainant's concern about the broadcast of the items before the release of the Select Committee's report and the constraints that might have placed on Dr Edwards, TVNZ said the timing of the broadcasts were a matter of editorial discretion. It was a matter of vital importance in a democracy, TVNZ continued, for the media to be able to report developments in an on-going story in a manner which complied with the broadcasting standards.

Pointing out that some people tried to evade answering significant questions by hiding behind the sub-judice cloak, TVNZ argued:

We repeat that it would have been perfectly possible for Dr Edwards, without dishonouring his obligations to the Select Committee, to talk to Television New Zealand and point our reporters in the direction of appropriate responses to questions relating to his role. The fact is that he sought to muzzle our reporter by withholding his co-operation.

TVNZ concluded:

Finally, we respectfully remind you again that this was an item of considerable public interest - as has been highlighted in the final report from the Select Committee. We believe our reporters acted properly in gathering and delivering the story and that no breaches of the Codes of Broadcasting Practice have occurred.

Dr Edwards' Response to TVNZ's letter

A copy of TVNZ's letter was sent to Dr Edwards' solicitors who, in a letter dated 27 May 1993, offered succinct comments in the hope of bringing the matter to a speedy conclusion.

The solicitors questioned why TVNZ had introduced material from the Select



Committee report which, in their opinion, obscured and confused the basic issues before the Authority. They wrote:

The Select Committee's conclusion that the Southpac financial evaluation of the Beechcraft and ACAA tenders contained certain errors in no way vindicates TVNZ's position.

Pointing out the Authority's task was not to review the Select Committee's report, the solicitors observed:

... the Select Committee found no evidence of corruption, and the Committee's conclusions of incompetence on the part of Airways Corporation personnel are questionable at best.

Describing as scornful TVNZ's allegation that Dr Edwards attempted to muzzle its reporter by being unco-operative, his solicitors said that the implication was mischievous and another example of TVNZ attempting to divert attention from the fact that its programmes "constituted a serious and inexcusable breach of the Code".

TVNZ's Final Comment to the Authority

In its reply dated 1 June 1993, TVNZ said it also wished to bring the correspondence to an end. It had supplied an extract from the Select Committee as evidence of two points: to show that the Select Committee believed Dr Edwards to be in charge of the tendering process and to address questions raised by the complainant about the Southpac report. Pointing out that it was understandable in view of its findings that Dr Edwards wished to challenge the Select Committee, TVNZ believed that the Committee's credentials spoke for themselves.

TVNZ concluded:

Finally, we reiterate that the items dealt with a matter of considerable public interest, and that Dr Edwards was offered every opportunity to assist in the making of them but declined to respond to enquiries made of him.

Dr Edwards' Final Comment

In response to TVNZ's final comment, in a letter dated 10 June 1993 Dr Edwards' solicitors declined to comment further other than to dispute TVNZ's insinuation that a complainant could not contest the Select Committee's report. However, it added, the Authority could not examine the report critically without breaching Parliamentary privilege. It cited an Australian case in support of that proposition.

