BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 83/93
Dated the 21st day of July 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

MORRIS B. JONES
of Papakura

Broadcaster
TELEVISION NEW ZEALAND LIMITED

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

DECISION

Introduction

A dispute over a building permit in Papakura and the subsequent imprisonment of the young house owners involved was the subject of an item on the *Holmes* programme broadcast on TV1 between 6.30 - 7.00pm on 2 December 1992.

Mr Morris Jones, Principal Inspector with the Papakura District Council, who was named and featured in the programme, complained to Television New Zealand Ltd that the programme misrepresented the facts, was unbalanced and in breach of broadcasting standards.

Responding that it had given an opportunity for all parties to be heard, and noting that Mr Jones had not availed himself of the offer, TVNZ denied that the item was unbalanced and in breach of broadcasting standards and declined to uphold the complaint. Dissatisfied with TVNZ's decision, Mr Jones referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the item complained about and have read

the correspondence (summarised in Appendix III). As is its practice, the Authority has determined the complaint without a formal hearing.

The Complaint

Mr Morris Jones complained to TVNZ about an item on the *Holmes* programme broadcast on TV1 between 6.30 - 7.00pm on 2 December 1992. In his capacity as Principal Inspector for the Papakura District Council, Mr Jones was featured in the item, the focus of which was the imprisonment of a young couple, the Gillums, parents of two small children, over a building dispute. Mr Jones claimed that the item misrepresented the facts by portraying him and the Council as the villains, and that no mention was made of the fact that the dispute had been going on for several years and that numerous undertakings and injunctions had been filed in court and subsequently breached by the Gillums who were the owners of the house at the centre of the dispute and Mr Taylor, the builder. Further, he objected to the manner in which the item, by seeking the young couple's release from prison, attempted to circumvent judicial proceedings.

The Programme

To ensure an understanding of the issues, the Authority includes the following summary of the item.

It was introduced by the presenter who explained that Mr Taylor, a builder, was waiting to be arrested and imprisoned for 6 months and that his daughter and son-in-law were already in prison for the crime of living in their home in contempt of Court. The couple, the presenter continued, were in prison because of a run-in with building regulations. He noted that the house had been certified as safe and solid by a reputable engineer but that neither the District Council nor the District Court would accept that certification.

Mr Taylor, who had been a builder for 40 years, then gave his version of events. He expressed the view that the lives of his daughter and her husband had been ruined because of the selfish building inspector, and that their imprisonment was a very high cost to pay for putting his daughter into her own home. It was his view that Mr Jones, the Building Inspector, did not like this house because it was out of character with the rest of the up-market suburb of Conifer Grove.

The reporter, Mr Valintine, then explained that the conflict was between the Council which maintained that the workmanship on the house was poor and Mr Taylor who believed he was being victimised. Mr Taylor's version was that the requirements of the Council were unreasonable, giving as examples a pile which he said was 3/8 inch off plumb (possibly, he suggested, having been knocked by a wheelbarrow) and leaving four 4-inch nails in the north west wall to mark the location of a meter box but which the Council described as poor carpentry.

To a question from the reporter, Mr Taylor denied emphatically that secondhand timber was used in the building. He emphasised that he would not take short cuts in a home for his daughter.

The reporter then noted that there had been several stop work orders from the Council and that Mr Taylor had breached these. Mr Taylor explained that the Building Inspector would not visit the site and detail what exactly he had to do to remedy the alleged defects.

It was then reported that the dispute "hotted up" when the couple, in contempt of Court, moved into the house before its completion. Mr Taylor explained that that was common practice and referred to examples of other home owners who did so, agreeing with the reporter that "everyone" did it. The report continued by noting that the contempt of Court charges had been put on hold when Taylor hired an engineer "over a year ago". Mr Taylor explained that he had followed the engineer's instructions. The engineer then confirmed that he had certified the house as safe and fit to be occupied, explaining that the few piles that were not plumb did not affect the structure.

However, the report continued, warrants for the arrest of the Gillums had been issued. Mr Taylor observed that the house which should have cost him $45,000 was now, because of Mr Jones and the cost of hiring his own engineer, costing $90,000.

In answer to the reporter's question, Mr Reelick, the engineer, expressed his puzzlement as to why the Council would not accept his certification. The reporter noted that he had tried to get comment from the Council but that none of its officers was prepared to be interviewed, although the Mayor was reported as having said that Mr Taylor had had numerous opportunities to correct the defects and that a paragraph in the 29 May 1992 decision of the District Court summarised it all. The reporter read a paragraph from the judgment which expressed the Court's frustration with the defendants:

> None of the Defendants has any credibility with the Court. Their undertakings as embodied in the memorandum of 20 March 1990 were breached with a speed and to an extent which admits of no excuses.

Mr Taylor's reaction to that criticism was that he did not accept that he had done wrong and he maintained that there was no justice in putting his daughter and her husband in gaol.

In concluding, the presenter observed that the Papakura District Council had spent $25,000 on the case, that two people were in prison at the taxpayers' expense and that Social Welfare was writing the cheques for the children. "So where will it end?" he asked.

The following evening a second item was broadcast on *Holmes*. Since this was referred to by TVNZ in its letters of 26 May and 19 April the Authority requested a copy of the tape. It noted that this subsequent item showed the Mayor of Papakura, Mr Hawkins, explaining from his hospital bed that the Council intended to resolve the matters quickly and that he hoped that the Gillums would be released from prison soon. Further footage showed the Gillums being reunited with their children.

TVNZ's Description of the Programme Overall and its Impact

In its correspondence with the complainant and with the Authority, TVNZ's interpretation of the events was that the item:

> pointed to a ludicrous situation which saw a young couple go to prison because of a dispute over a housing permit.

It noted that within two days of the broadcast, the issue was resolved and the couple released from prison. It described the item as being in the public interest because it exposed "the relentless march of bureaucracy" which had resulted in the serious consequences for the family.

For clarity, the Authority records below the arguments of the complainant and TVNZ and its findings under the standards cited by the complainant. A chronology of events is included in Appendix I. As will become apparent, there is a lengthy history to the events chronicled in the item on *Holmes* on 2 December, extending over a period of 3 1/2 years. To explain that history, the Authority has cited in Appendix II brief extracts from the District Court decision dated 14 August 1990 and a number of extracts from the 34 page District Court decision dated 29 May 1992. TVNZ had a copy of the latter decision which was quoted from during the item; it is not known whether it had a copy of the earlier decision.

The Standards Allegedly Breached and the Authority's Decisions

(i) Standard G1

Mr Jones complained that there were a number of factual inaccuracies in the item which he alleged were in breach of standard G1 of the Television Code of Broadcasting Practice. That standard requires broadcasters:

> G1 To be truthful and accurate on points of fact.

First, in the introductory segment, it was stated that the Gillums were living in the Papakura home at the time they were imprisoned. Mr Jones pointed out that this was incorrect as there were tenants living in the home, and the Gillums were living in New Plymouth.

TVNZ acknowledged that the introduction was not correct, but did not believe it was a serious enough error to warrant correction. Nor, in its view, was it of relevance to the story.

The Authority accepted that the error was careless rather than deliberate but it disagreed strongly with TVNZ's claim that the statement had no relevance to the story and was not serious enough to warrant correction. Clearly the emotional impact of the programme would be greatly heightened by the belief that the Gillums had been cast into prison from their own home. Instead the facts of the matter were that, with the knowledge that

stop work notices had been in force for more than 18 months, with undertakings given not to carry out new work and to remedy defects not honoured, and with injunctions granted and applications for committal orders made, the Gillums had gone to New Plymouth and had entered into a lease of the property for a period of one year. This was in defiance of an undertaking given on 6 June 1990 that no one would occupy the home until a Certificate of Occupancy was issued. Against that factual background, the emotive effect of the untrue statement that the Gillums were living in the house at the time of their imprisonment would have assisted in giving viewers an impression of the situation that was well removed from the truth. The Authority concluded that TVNZ was clearly in breach of standard G1.

To Mr Jones' complaint that it was incorrect for the item to refer to him as a Building Inspector, instead of Principal Inspector, TVNZ responded that in the context it had been appropriate, as he had been responsible for "the vast majority of inspection work on the house and made the decisions on what was acceptable and what was not."

The Authority accepted that the description of Mr Jones as a Building Inspector was not strictly accurate, but it did not believe that the difference was of practical significance. It considered that, by being identified as the building inspector, Mr Jones was perhaps more directly ascribed the full responsibility for the events which led to the imprisonment of the Gillums. In fact, the record revealed that the Papakura District Council did not even have jurisdiction until 1 November 1989 when local government boundaries were redrawn and that he was but one of several inspectors involved with the property. However, on balance, the Authority concluded that using the term building inspector did not breach standard G1.

With reference to the duration of Mr Taylor's sentence, Mr Jones complained that TVNZ was wrong to claim that it was to be for six months when it was only a three month sentence. While now acknowledging the error, TVNZ defended itself by claiming that the court documents were unclear.

The Authority agreed that the statement was factually incorrect, noting that this was another instance of carelessness in the compilation of the report and that the correct information had been readily available in the District Court judgment which TVNZ quoted from later in the item. The Authority considered that the reporting of a sentence which was double what was actually imposed also served to heighten the emotional impact of the story. It concluded that the error contravened standard G1.

Finally, under standard G1, Mr Jones complained that the entire item was untruthful and misleading in its presentation because the general impression given was that the inspectors were unduly petty in their insistence upon compliance with the code. Acknowledging the additional concerns raised by Mr Jones, the Authority considered that this aspect of the complaint raised issues that were more appropriately dealt with under standards G4 and G6 below.

(ii) Standard G4

Arguing that the item portrayed him and other Council employees as bureaucratic and

petty, Mr Jones complained that the item was in breach of standard G4. Standard G4 requires broadcasters:

> G4 To deal justly and fairly with any person taking part or referred to in any programme.

Mr Jones maintained that it was unfair to present only one side of the story - the Gillums' and Mr Taylor's - and that he and other employees were restrained by the Council from being interviewed. However, he continued, this should not have inhibited TVNZ from presenting all the facts, as information was readily available through Court documents and Council files. In particular, Mr Jones noted that TVNZ had available to it the Papakura District Court decision issued on 29 May 1992.

This 34 page decision, extracts of which are recorded in Appendix II, recounted the history of the dispute about the house in Papakura, the concerns expressed by various authorities and the responses from the Gillums, the owners, and in particular, Mr Taylor, the builder. The decision ordered that the interim injunction served on the defendants could be enforced by committal of the defendants to prison for a term of three months, but that the warrants were to lie in Court for a period of three months from the date of issue of the decision. That, the Court explained, was to enable the defendants to remedy the defects and thus avoid being imprisoned.

In response to the allegation that the item breached standard G4, TVNZ claimed that the Council did itself a disservice by preventing Mr Jones from speaking. It reported that it had given the Council many opportunities to comment, and that it could not accept responsibility for Council's policy which prevented any of its representatives from commenting. It declined to uphold the complaint because, it argued, it had fulfilled its statutory obligation to be fair to the parties referred to by giving the Council the opportunity to comment.

The Authority concurred with TVNZ to the extent that the Council's silence was a contributing factor in its unsympathetic portrayal. It believed that it would have been expedient for the Council to have a procedure in place to deal with media inquiries over matters of public interest. The Authority acknowledged that the Council had been advised by its solicitors that the matter was subjudice. Nevertheless, the Authority considered it was not unreasonable for the Council to expect that its point of view would be fairly represented, especially as it knew that TVNZ had the court documents available to it, and the reporter had been present in Court on an earlier occasion. In the Authority's assessment, the item conveyed the impression that over-zealous bureaucrats had engaged in a personal vendetta against a young couple and the young woman's father, who was also the builder. The item did not put into perspective the facts of the long running dispute and the builder's flagrant disregard of building by-law requirements. The Authority regarded the tone of the item as unnecessarily provocative and emotive. It noted in the introductory sequence the presenter, stated:

> The couple is behind bars because of a run-in with building regulations.

The item reported Mr Taylor's comment:

> These two kids have had their lives ruined by a selfish building inspector.

He continued to espouse the line that it was a personal vendetta:

> [the home] is out of character with the rest of the brick houses and that upsets him [Mr Jones].

Mr Taylor angrily commented that the cost of the house had doubled because of Mr Jones and the engineer, adding that he hoped that made them happy.

There was no attempt by TVNZ to offer balance to statements such as these. The impression was given that the breaches were for such minor things as a pile which was 3/8 inch off plumb and for four nails protruding from the north west wall whereas the Court decision TVNZ had in its possession clearly stated that there were long-standing major defects in construction.

The Authority concluded that the item did not deal fairly with Mr Jones. It acknowledged that it was unfortunate the Council policy prevented him from commenting, and particularly unfortunate that no explanation was offered as to why the engineer's report, sought by Mr Taylor, which apparently said that the house was safe to live in, was not acceptable. However, it was firmly of the view that enough information was available to TVNZ to be fair to both Mr Jones and the Council and that it had deliberately taken the line that the Gillums were the innocent victims of the relentless bureaucracy personified by Mr Jones. Such an attitude did not accord with the court documents which detailed the long history of the dispute and the patient and painstaking approach of the District Court Judge and the Council, whose requirements were deliberately flouted, over a period of more than three years (see Appendix II). The Authority upheld this aspect of the complaint.

(iii) Standard G5

Mr Jones complained that TVNZ was in breach of standard G5 by reporting on a matter that was before the court. Standard G5 requires broadcasters:

> G5 To respect the principles of law which sustain our society.

Claiming that the whole matter was subjudice, Mr Jones expressed concern that TVNZ attempted to interfere with the court's decision and, in doing so, had undermined respect for the law and breached standard G5. TVNZ responded that it did not believe that it was a matter of contempt of court and, furthermore, that it was a matter of public interest to have the issues resolved.

Because the parties had conflicting legal advice as to the application of the subjudice rule on these facts, the Authority sought an opinion from the Crown Law Office which advised that publication of material intended to influence the court while proceedings are subjudice may be in contempt of court. However, in this case, because the dispute had reached a hiatus and the warrants for committal had been sought and granted, it was unlikely that the broadcast would influence the court in respect of the future conduct of

the case. It was the opinion of the Crown Law Office that because the proceedings had reached a standstill this was not a case where a court would consider justice imperilled and thus constitute a contempt. Accordingly the Authority concluded that TVNZ had not violated the subjudice principle by screening an item on the case and standard G5 was not breached.

The Authority appreciates that Mr Jones had been advised by the Council's solicitors that the matter was subjudice and that none of the Council's officers should speak about the matter to the media. This fact explained why the Council and its officers were unwilling to comment to TVNZ and contributed towards their unsympathetic treatment in the item.

A second argument advanced by Mr Jones regarding a breach of standard G5 was that "the *Holmes* show made a complete mockery of the New Zealand legal system" by giving the impression in the item that the law was absurd. In response to Mr Jones, TVNZ assured him that the manner in which a local body carries out its statutory duties was a legitimate subject for public scrutiny and discussion through the news media. It pointed out that the Council had options other than to seek an order for the committal of the Gillums and Mr Taylor, and that it believed that it was legitimate for TVNZ to question the Council's handling of the matter. It pointed to the "ludicrous situation" which had resulted in the imprisonment of the Gillums, and asserted that the whole issue had been quickly resolved with the intervention of its reporter as arbitrator.

The Authority has studied the court documents which were supplied by the complainant and which gave a detailed history of the dispute and the previous attempts at resolution. It had also sought, and received, clarification of the present situation from the Papakura District Council, which, in a letter dated 10 May 1993, revealed that at that date no completion certificate had been issued. The Authority also noted that the Council was still awaiting certification from Mr Reelick (the engineer featured in the broadcast), that the breaches had been remedied and inspected by him and that the Council intended to refer the matter back to the District Court if no certification was received by 20 May 1993. A subsequent telephone call on 21 June 1993 disclosed that the certificate of completion had still not been issued.

The Authority also took into account Mr Jones' argument that had the Council been negligent in its statutory responsibility to enforce the building regulations, it would have incurred liability in the future, if problems arose as a result of substandard construction.

In light of this information about the continuing failure to supply certification, the Authority took issue with TVNZ's claim that it successfully intervened and resolved the situation. Certainly, the broadcast and the resulting public pressure exerted on the Council, effected the prompt release of the Gillums from prison. However, the Authority noted, until a certificate was issued verifying that all corrective work has been completed, the committal orders were still in force. In the Authority's opinion, public opprobrium persuaded the Council to agree to the Gillums' release from prison, but the outstanding matters concerning the house were not then, and still have not been, resolved.

The Authority believed that TVNZ, by taking the view that the law was ludicrous and absurd, had not acknowledged the thorough judgment issued on 29 May 1992 from the Papakura District Court and the patience and concern of the Judge involved. In the Authority's view, it was wrong for TVNZ to make a nonsense of a seriously considered judgment by ignoring the evidence detailed there. Nevertheless, the Authority decided that implied criticism of a Judge's decision was not a matter that was prohibited under standard G5 and accordingly it was not in breach. The Authority did, however, take into account the points raised by Mr Jones when it considered the complaint under G6 below.

(iv) Standard G6

The final aspect of Mr Jones' complaint was that the item lacked balance because it failed to present fairly both sides of the dispute. Standard G6 requires broadcasters:

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

In Mr Jones' opinion, the item should have given due allowance to the Court proceedings and recognised that the Council was unable to answer the allegations made against it. He believed that it was unfair not to have emphasised the Council's regulatory responsibilities and the lack of options available to those who enforced the regulations.

In response to the Authority, TVNZ maintained that in spite of the Council's policy forbidding its representatives to speak publicly, it had spoken to as many officials as it could, both on and off the record. It had also asked "hard questions" of the builder "to add further balance to the item", and included some comments from the District Court judgment. It wrote:

> We would have preferred to have comment from the Council in the programme. The fact that it was not forthcoming was unfortunate, but not sufficient reason to abandon an investigation of a matter that was clearly in the public interest.
>
> Every effort was made to reflect the Council's viewpoint.

The Authority found it difficult to reconcile the facts as they were presented in the *Holmes* item with the facts gleaned from its study of the court documents. Although the Council was unwilling to allow any of its officers to speak, in view of the long history of the dispute, the Authority believed that there should have been considerably more effort made to challenge the statements made by Mr Taylor, the builder. For example, in describing the breaches, Mr Taylor stated that the sorts of things which were in breach of the building regulations included one pile which was 3/8 inch off plumb (probably, he said, knocked by a wheelbarrow), and four protruding nails which the inspector had said exhibited bad workmanship and which Mr Taylor explained were simply to mark the location of the meter board. He vehemently denied that any of the timber used was second hand and gave an assurance that no shortcuts were made. The reporter made no attempt to challenge these statements. Yet he should have been fully aware of the evidence sworn in Court. As the judgment issued 29 May 1992 stated at page 15:

> The range and nature of the breaches was far from trivial. The photographs exhibited to Mr Jones' affidavit sworn on 22 December 1989 graphically illustrate that: secondhand and sub-standard material is obvious, one piece - even on a small photograph - shows dry rot; there are undersized rafters, floor joists and lintels; bracing of various types is inadequate or absent; there are unauthorised departures of structural form from the plans and specifications (some of those required an engineer's calculations or certification); and examples of poor workmanship were plentiful.

Viewers who did not have access to the Court documents could well have been left with the impression that the Council had indeed embarked on a campaign of vindictiveness and pettiness and that the young couple was imprisoned without justification. In the Authority's opinion, viewers should have been given sufficient balancing evidence to allow them to decide for themselves the validity of Mr Taylor's comments. The Court decision of 29 May 1992, which TVNZ had in its possession, made quite clear the Court's long struggle to get the defendants to appreciate the gravity of their situation and the way in which all of them "seemed quite unwilling or unable to address the issues in an appropriate way." The Authority was of the opinion that TVNZ's "hard questions" to Mr Taylor were not sufficient to provide adequate balance in the face of the programme's critical assumptions about the Council and the Court. The judge said that "None of the defendants has any credibility with the Court". Yet, in the item, Mr Taylor was merely given the opportunity to make a simple denial of that statement and was then given full rein. His apparently honest belief that he had done no wrong did not accord with the facts.

The Authority also noted that the Council's statutory responsibility to enforce the by-laws was accompanied by a duty of care to ensure that regulations were strictly complied with if it was to avoid future liability. As the 29 May 1992 decision stated at p. 30:

> Although the law on the topic may well still be in the process of development, the degree of vigilance expected of a local authority faced with a builder like the Second Defendant [Mr Taylor] has to be very high if future liability is successfully to be guarded against.

In upholding the complaint that the item was in breach of standard G6, the Authority concluded that the item was an extremely ill-balanced account of a very serious matter. Mr Taylor's views were reported in detail and were not challenged; TVNZ had available to it a court document which would have provided facts to balance his statements. Having read the 29 May 1992 decision, the Authority concluded unequivocally that the item presented on *Holmes* was lacking in balance and accordingly in breach of standard G6.

The District Court Summary

After hearing the application for warrants to commit to prison Mr Taylor (referred to in this summary as the Second Defendant) and the Gillums (the First Defendants) for breaches of the injunction to stop work on the house, in his decision dated 29 May 1992 at page 21, Judge Moore recorded:

None of the Defendants has any credibility with the Court. Their undertakings as embodied in the memorandum of 20 March 1990 were breached with a speed and to an extent which admits of no excuses. I have set the history of the matter out in detail to show that that was a continuation of a longstanding pattern of conduct. The injunction had to be made and, on the face of it, clearly stated the Defendants' liability to imprisonment if they disobeyed it. Despite all that, work continued and the Plaintiff [Papakura District Council] was not given the opportunity, let alone called upon, to make the inspections necessary to approve whatever remedial work was done. I have sympathy for Mr Reelick's situation. It is difficult from his affidavits to be sure of the extent to which he personally inspected various items of work as opposed to taking the Second Defendant's [Mr Taylor] word for what had been done and how it had been done. However, even accepting that some remedial work was carried out, I am satisfied beyond reasonable doubt that the stage was never reached, never even nearly reached, where the stopwork notice ceased to apply. The Defendants went ahead and finished the house in a way which made it impossible for the Plaintiff's officers to check what had been done and what had not. Indeed, the Second Defendant in particular seems to take umbrage at the proposition that the Plaintiff's officers should endeavour to inspect the property in his absence. The sparse affidavit evidence on the topic from the Defendants is to the effect that the Second Defendant was generally working at the weekends. That certainly fits in with the pattern of the evidence on behalf of the Plaintiff.

I am satisfied beyond reasonable doubt that all three Defendants set about making the dwelling habitable, then the First Defendants and subsequently their tenants inhabited it, in clear and contemptuous breach of the injunction and in circumstances in which they must have been aware that a Certificate of Occupancy had not been issued and would not be issued until very extensive inspections and much further work had been carried out. They knew that the inspections required included inspections of areas which they had taken the trouble to cover over with interior and exterior claddings of various types. The various photographs depicting the nature and quality of the Second Defendant's workmanship give me no confidence whatsoever that the Court is justified in assuming that anything he did was done properly. The Plaintiff's inspectors, had, in light of the history of this matter and of the Plaintiff's legal obligations, to be unusually vigilant before approving any work. Any other approach would make the Council a sitting duck for an action in damages by a future owner of the property.

At pages 31-32 he continued:

In the early stages of the matter it was possible to see the First Defendants as being very largely the victims of a combination of youthful inexperience and the Second Defendant's force of character. That is one of the principal reasons why the Court has devoted so much time and effort to endeavouring to get the Defendants to face up to the practical problems that require resolution. However, given the later actions of the First Defendants in co-operating (at very least) in the completion of the dwelling, partially occupying it, and then renting

> it out, in the face of the interim injunction, I am forced to conclude that however much one recoils from the thought of imprisoning young parents for what can only be seen as a disastrous exercise in endeavouring to acquire their own home, there comes a point when the maintenance of law and order requires that, whatever the other considerations, the Court act firmly in enforcing its orders.
>
> The extent, if any, to which the Second Defendant can be blamed for the letting out of the dwelling is unclear. But on him must rest the greater part of the responsibility for continuing to complete the dwelling in the face of the injunction; as the builder still he continues to be in breach. It must be remembered that that breach followed breaches of undertakings given in the memorandum filed in the Court and prior persistent refusal to observe stopwork notices.

These extracts together with other material referred to in the Appendices clearly indicated the true position.

Conclusion

In its assessment of this complaint, the Authority has considered the extensive court documents (further relevant extracts from which are cited in Appendix II) alongside the lengthy submissions from Mr Jones and TVNZ. It concluded that the story related in the item on *Holmes* on 2 December 1992 was worthy of telling. The thought of a young couple being committed to prison for breaches of building by-laws would be abhorrent to viewers. These viewers, who were not privy to the full facts of the story, would have been left with the conclusion that this was a case of bureaucracy, as personified by Mr Jones, gone mad. The Authority accepted that the Council's unwillingness to be interviewed made it more difficult to present the other side of the story. Nevertheless, it was of the view that there was sufficient evidence readily available to reveal that the essential issue was, as the District Court Judge said, the "contemptuous persistent breaches of an injunction" which made it imperative for the broadcaster to question Mr Taylor's veracity.

For the reasons set forth above, the Authority upholds the complaint that the item on *Holmes* broadcast by Television New Zealand Limited on 2 December 1992 was in breach of standards G1, G4 and G6 of the Television Code of Broadcasting Practice.

The Authority declines to uphold the complaint that the item was in breach of standard G5.

Having upheld a complaint, the Authority may make an order under s.13(1) of the Broadcasting Act 1989. In view of the extent and seriousness of the breach, and the effect on Mr Jones and his family, the Authority has decided to impose the following order.

Pursuant to s.13(1)(a) of the Broadcasting Act 1989, the Authority orders Television New Zealand Limited to broadcast a correction and apology statement approved by the Authority and pertaining to Mr Morris Jones' complaint about the item which featured

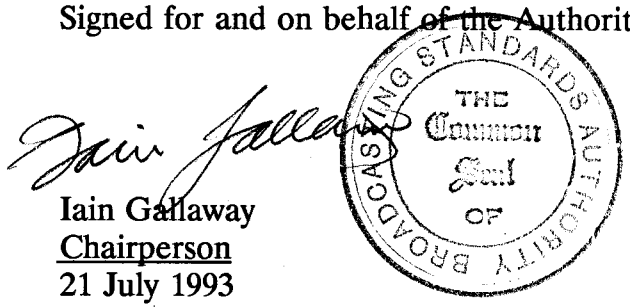
him on *Holmes*.

That statement shall be broadcast immediately prior, or immediately following the *Holmes* programme on a week day on or before 28 July 1993.

Further, that statement shall:

- **be read out and appear in writing on the screen;**
- **be headed "Correction and Apology by TVNZ Ltd";**
- **explain that TVNZ has been ordered by the Broadcasting Standards Authority to make the statement as a a result of the Authority's decision on the complaint concerning the item on *Holmes*;**
- **summarise the Authority's decisions on each aspect of Mr Jones' complaint, including a statement that the programme was unfair, unbalanced and inaccurate; and**
- **contain an apology from TVNZ to Mr Jones for the broadcast of the item on *Holmes* on 2 December 1992.**

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson
21 July 1993

Appendix I

Chronology of Events

1989	Breaches of building by-laws occurred.
6 September 1989	Stop work notice issued by Manukau City Council on the building of the house at Brylee Drive. Notice not complied with.
1 November 1989	Local government reorganisation brought the property within the territory of Papakura District Council.
15 November 1989	The builder and owners advised by Papakura District Council that the stopwork notice was still in force.
15 December 1989	Solicitors for the builder and owners advised the Council that work had not recommenced. Council's inspectors had reason to believe otherwise.
22 December 1989	Papakura District Council applied for an injunction to compel compliance with stop work notice.
23 January 1990	Undertaking by builder's and owners' solicitor that they will not carry out any new work on the house.
8 March 1990	Stop work notice issued (embodying earlier stop work notices).
20 March 1990	Undertakings given by builder and owners to rectify defects.
30 May 1990	Inspection of property revealed that a power generator was ready to connect power to the house and considerable work had been done on it.
6 June 1990	Proceedings brought before the Court. Interim injunction granted to compel compliance with the stop work notice and to refrain from occupying the house until a Certificate of Occupancy had been given by the Papakura District Council. This was breached. The defendants continued with the building. They ensured that the inspectors had no opportunity to ascertain what was going on by covering the windows and not allowing inspectors entry to the property.
17 July 1990	Application filed by Council seeking committal of builder and

	owners to prison for breaches of the injunction.
1 August 1990	Application for committal made by Council.
	Court adjourned hearing, hoping that matters could be resolved.
14 August 1990	Memorandum issued by District Court Judge Moore Adjournment until 28 September 1990.
28 September 1990	Adjournment until 8 February 1991.
30 October 1990	Request by Council through builder's and owners' solicitors to allow the property to be inspected. Evidence that it was being occupied at that time.
31 October 1990	Undertaking given by Gillums to allow inspection of property.
8 February 1991	Adjournment of hearing for committal orders until 20 February 1991.
28 February 1991	Fixture set down for 25 and 26 June 1991.
6 May 1991	Tenancy agreement signed by Gillums and tenants for 12 months.
25 June 1991	Application for committal orders. Hearing adjourned until August.
7 August 1991	Hearing on application for committal orders completed. Decision reserved.
29 May 1992	Court granted an order that the interim injunction could be enforced by warrants of committal against the defendants but was subject to the condition that the warrants lie in Court for 3 months from the date of the decision.
November 1992	The Gillums committed to prison. Mr Taylor, the builder, not arrested.
2 December 1992	*Holmes* programme broadcast.
4 December 1992	Application by the Papakura District Council for discharge of Gillums from prison.
10 May 1993	Papakura District Council advised the Authority that it still had not received the appropriate documentation required to issue a completion certificate.

Appendix II

District Court Decision 14 August 1990, MA No. 943/89

p.3 What the Council is seeking is that they go to prison for disobeying the order of the Court. Sending them to prison would only be a punishment - it would do nothing to help the house matter. In practical terms what it would probably do is cost either or both of them their employment and thus the ability to fund the housing project that they are engaged on.

p.5 I make it plain to the defendants that they are acting unlawfully if they do any work on this property other than work which is expressly authorised by the Council, because the Court order is a Court order against continuing to breach the building permit. Until they have rectified the deficiencies in the present structure, anything further that they do without authority will almost inevitably have the effect of consolidating those deficiencies.

District Court Decision 29 May 1992, Plaint No 943/89

p.3 Now all has turned to disaster. The house still cannot lawfully be occupied (though it is); much money which should have gone towards paying for the house or contents has had to go (and may well long have to go) to lawyers and engineers; there is potential substantial liability for costs to the Plaintiff; the cost of remedying defects in the house may be considerable; and, (most seriously of all) orders are sought that they both (and the Second Defendant as well) be committed to prison. For that situation too they have much to thank, if that be the appropriate word, the Second Defendant.

Para bottom p.4 - top p.5
One recoils from the thought of imprisoning young parents for what might (wrongly) be seen as just by-law breaches, but there is a limit to any court's willingness or ability to tolerate breaches of its orders. If, despite all my urgings and warnings, the Defendants have not by now grasped that, and acted accordingly, then it will obviously take very drastic action to get the message home to them.

p.6 I hasten to add that the essential issue is contemptuous persistent breaches of an injunction.

p.7 One of the many reasons why I reject, as I do, his protestations which can be summarised as characterising this litigation as the result of an unfortunate conflict of personalities between himself (whom he sees as an experienced, practical minded and competent builder) and the Plaintiff's Principal Inspector (whom the Second Defendant sees as petty minded, unrealistic and vengeful) is that the problems over the construction of Brylee Drive were well developed

long before the Plaintiff or Mr M.B. Jones, its Principal Inspector, were in any way involved.

p.9 Mr Sowerby's (the Manukau City Council's then Supervising Building Inspector) affidavit sworn on 21 December 1989 exhibits extensive photographic proof of many of the defects listed in that notice. Again many, if not all, present as elementary matters upon which an experienced builder should not have required correction. But the Second Defendant was not a man to be diverted from doing what he wanted by building permits, by-laws, standard specifications or even a stop work notice. He carried on as before.

p.11 I find it impossible to avoid the overall conclusion that, for all his experience, of whatever quality, and the very clear indications that the Manukau City Council regarded a building permit as a permission whose terms had to be complied with, the Second Defendant regarded the permit, plans and specifications as a generalised permission entitling him to proceed as he wished to build a house which was of the same approximate form as that approved. So far as he was concerned he could and would change structural details, use materials of a different type or quality to those specified and substitute for the terms of the permit, plans and specifications his own views as to building quality and standards of workmanship. In keeping with that approach, notwithstanding Field Notice 716, the Second Defendant went ahead and poured the floor slab without that requisite inspection and approval.

p.14 In late November 1989, at a meeting attended by Mr Jones and Mr Culley, the First Defendants undertook not to proceed with further building, but the problems continued. The pattern is clear: many defects remained; as further work was carried out (in defiance of notices) it displayed the same poor standards of workmanship and materials; as work progressed (mostly at weekends) structural features were covered and the difficulties of monitoring compliance (it might be more accurate to say non-compliance) with the building permit increased; the plaintiff's list of non-complying features grew, but its inability to make comprehensive inspections, a situation deliberately brought about by the Defendants, meant that there was an every increasing likelihood of unascertained non-conformities.

p.22 That affidavit of Mr Jones also had as annexures a number of photographs showing that further work had been carried out on the house in breach of the injunction. Much of that work was of a nature which covered up structural defects or made it impossible to check whether or not they had been remedied.

p.23 On 14 August 1990 the committal application came before me. Although the First Defendants were present the Second Defendant endeavoured to act as their spokesman. He was plainly much the most forceful character of the three and his comments to the Court indicated that he was largely oblivious of the seriousness of the situation. It was also apparent that, in determinedly expressing the viewpoints that he held, he was, by the minute, making things

much worse for the First Defendants as well as for himself. I therefore declined to allow him to act as their spokesman. I pointed out and recorded that there was a conflict of interest between the First and Second Defendants and that the Second Defendants seemed at least partly responsible for the First Defendants' predicament. I endeavoured to get the Defendants to face up to the task of complying with the law. My remarks to that effect were recorded and subsequently typed (when they were then headed as a memorandum). A copy of that is annexed to this decision.

Para bottom p.24 to p.25

On 25 June Mr M.B. Jones swore a further affidavit. In it he described an inspection of Brylee Drive on 20 June when extensive further work (in breach of the interim injunction) on and about the house had been noted. That work included not only building work in the narrow sense but the installation of plumbing and drainage systems (much of that work being alleged to be substandard) and, most importantly of all, an allegation that the First Defendants had put tenants in the house and that those tenants had produced to Mr Jones a signed Tenancy Agreement for a period of 12 months from 6 May 1991. Exhibit "A" to that affidavit was a letter by the Council's District Solicitor to those tenants pointing out that their occupancy of the property was in breach of a Court Order, albeit it one to which they were not parties.

Para bottom p.27 - p.28 - p.29

None of the Defendants has any credibility with the Court. Their undertakings as embodied in the memorandum of 20 March 1990 were breached with a speed and to an extent which admits of no excuses. I have set the history of the matter out in detail to show that that was a continuation of a longstanding pattern of conduct. The injunction had to be made and, on the face of it, clearly stated the Defendants' liability to imprisonment if they disobeyed it. Despite all that, work continued and the Plaintiff was not given the opportunity, let alone called upon, to make the inspections necessary to approve whatever remedial work was done. I have sympathy for Mr Reelick's situation. It is difficult from his affidavits to be sure of the extent to which he personally inspected various items of work as opposed to taking the Second Defendant's word for what had been done and how it had been done. However, even accepting that some remedial work was carried out, I am satisfied beyond reasonable doubt that the stage was never reached, never even nearly reached, where the stopwork notice ceased to apply. The Defendants went ahead and finished the house in a way which made it impossible for the Plaintiff's officers to check what had been done and what had not. Indeed, the Second Defendant in particular seems to take umbrage at the proposition that the Plaintiff's officers should endeavour to inspect the property in his absence. The sparse affidavit evidence on the topic from the Defendants is to the effect that the Second Defendant was generally working at the weekends. That certainly fits in with the pattern of the evidence on behalf of the Plaintiff.

I am satisfied beyond reasonable doubt that all three Defendants set about making the dwelling habitable, then the First Defendants and subsequently

their tenants inhabited it, in clear and contemptuous breach of the injunction and in circumstances in which they must have been aware that a Certificate of Occupancy had not been issued and would not be issued until very extensive inspections and much further work had been carried out. They knew that the inspections required included inspections of areas which they had taken the trouble to cover over with interior and exterior claddings of various types. The various photographs depicting the nature and quality of the Second Defendant's workmanship give me no confidence whatsoever that the Court is justified in assuming that anything he did was done properly. The Plaintiff's inspectors, had, in light of the history of this matter and of the Plaintiff's legal obligations, to be unusually vigilant before approving any work. Any other approach would make the Council a sitting duck for an action in damages by a future owner of the property.

p.30 No Certificate of Occupancy for the Brylee Drive property has ever been issued. Not only did the First Defendants occupy that dwelling, or at least parts of it, as a home for themselves for a period, but they compounded their contempt of the Courts order by entering into a long-term tenancy arrangement with third parties. When the matter was finally before the Court on 7 August last that situation, if not its seriousness, was acknowledged.

p.31 - 32

In the early stages of the matter it was possible to see the First Defendants as being very largely the victims of a combination of youthful inexperience and the Second Defendant's force of character. That is one of the principal reasons why the Court has devoted so much time and effort to endeavouring to get the Defendants to face up to the practical problems that require resolution. However, given the later actions of the First Defendants in co-operating (at very least) in the completion of the dwelling, partially occupying it, and then renting it out, in the face of the interim injunction, I am forced to conclude that however much one recoils from the thought of imprisoning young parents for what can only be seen as a disastrous exercise in endeavouring to acquire their own home, there comes a point when the maintenance of law and order requires that, whatever the other considerations, the Court act firmly in enforcing its orders.

The extent, if any, to which the Second Defendant can be blamed for the letting out of the dwelling is unclear. But on him must rest the greater part of the responsibility for continuing to complete the dwelling in the face of the injunction; as the builder still he continues to be in breach. It must be remembered that that breach followed breaches of undertakings given in the memorandum filed in the Court and prior persistent refusal to observe stopwork notices.

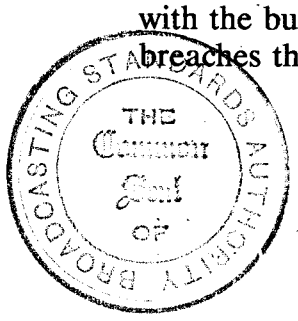
District Court Decision 4 December 1992, MA 055/943/9 (subsequent to the broadcast)

p.2 The background of the matter is the building of a home, in what was then part of Manukau City, by the second defendant for the first defendants. As a result of a succession of breaches of the Manukau City Building Bylaws, and a blatant disregard for the obligations imposed by the building permit, a stop work notice was issued on 6 September 1989. That notice was not complied with. The second defendant, in breach of the stop work notice and in breach of building bylaws and the building permit, carried out further substandard work. In the meantime, as a result of the reorganisation of the local authority boundaries, this problem became the burden of the Papakura District Council.

Endeavours to obtain the cooperation of the defendants to the construction of a dwelling which complied with the building permit and relevant bylaws, was met with what one can only describe as the expression of an attitude that the defendants could do as they wished, and that the Council was a nuisance which would ultimately go away.

Whatever may have been represented in other places, the evidence before the Courts proved major deficiencies of a sort which, had they been tolerated by the Council, would inevitably made it a sitting target for an action for damages on the part of any subsequent purchaser of the property.

Faced with a situation of continuing breaches of the stop work notice, the inclusion of secondhand, rotten and undersize timber in the building, unauthorised departures from structural from, including some which required an engineer's calculation, and what might in simple terms be described as plain bad workmanship, the Council applied to this Court on 22 December 1989 for an injunction against the first and second defendants to compel compliance with the building permit and the by-laws and to prevent continuation of the breaches that had been committed and were being committed.



Appendix III

Mr Morris Jones' Complaint to Television New Zealand Limited

In a letter dated 28 December 1992 Mr Morris Jones of Papakura complained to Television New Zealand Ltd about an item on the *Holmes* programme broadcast between 6.30 - 7.00pm on 2 December 1992.

The item concerned a long-running dispute between the Papakura District Council and the builder (Mr Taylor) and owners (the Gillums) of a house which did not conform to building code standards. Mr Jones, Principal Inspector for the Papakura District Council, alleged that the programme breached four standards of the Television Code of Broadcasting Practice because it was factually inaccurate, portrayed the Council building inspectors unfairly as the villains and thus did not deal justly and fairly with persons taking part in the programme, did not respect the principles of law and was unbalanced. In particular he claimed that no attempt was made to find out why the Council would not accept the certification by the engineer engaged by the builder and owners that the building was structurally sound or the fact that there were other matters which had not been certified. He described the programme as being biased against the Council and its officers, and noted that no mention was made of the fact that the defendants had had many opportunities to comply with the injunctions imposed by the District Court. He noted that the programme failed to mention that the Gillums were in prison not for a breach of Council by-laws but for contempt of Court. He wrote:

> The defendants constantly and consistently breached agreements, Interim Injunctions and undertakings in memorandums filed with the Court. No mention was made of this.

Moreover, he claimed:

> ... the entire programme was set on over-ruling a highly respected and competent judge's decision who had complete access to all of the facts. In addition to this no mention was made of the chances and warnings given by the Court (and by the Council) to the defendants should they not comply with the Interim Injunction. The Judge in his decision went on at great lengths to emphasise the warnings and opportunities given to the Gillums and Taylor.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Jones of its Complaints Committee's decision in a letter dated 10 February 1993.

It described the item on *Holmes* as dealing with:

> a ludicrous situation which saw a young couple go to prison because of a

dispute over a housing permit.

Further, it noted, the issue was resolved within a few days of the item being shown.

With reference to Mr Jones' complaint that no attempt was made to find out why the Council did not accept the engineer's certification, TVNZ observed that the reporter had asked Mr Jones for that information but was refused and was also refused information from the Council's Chief Executive. It also noted that after the item had been shown, the Council accepted the engineer's certification "after reaching agreement on relatively minor outstanding issues."

TVNZ denied that the item was biased in its portrayal of Council officers and believed that the programme had acted properly in giving them an opportunity to comment. The fact that none did comment was not its concern, but was "an internal problem within the Council".

TVNZ also denied that the item had not placed any weight on the fact that the owners of the house were in prison for contempt of court. It cited extracts from the transcript which, it claimed, emphasised that they had broken the law on a number of occasions. However, it also noted that the purpose of the item was to examine an absurd situation in which a couple ended up in prison because of a building dispute and it did not seek to report in detail on the District Court hearing.

It noted that Mr Jones had made much of the fact that the Gillums were in prison for contempt and not for breach of building by-laws, pointing out that it was the Council which kept the matter before the Court and which rejected arbitration.

Dismissing Mr Jones' complaint that the description of him as a building inspector was incorrect, TVNZ claimed that it was hardly unreasonable to do so when he did the majority of the inspection work on the house. It also noted that to report on an issue currently before the court was not necessarily a matter of contempt, noting that had found that TVNZ's action was in contempt, it would have taken action. It observed that a matter which had been in dispute for nearly two years was resolved within a week after the broadcast of the item.

In response to Mr Jones' argument that the programme did not mention the warnings given by the court, TVNZ argued that the item was not about a court hearing but set out to explore the wider issue of whether a dispute over a building permit should result in a prison sentence.

It argued that the length of Mr Taylor's sentence was unclear from the court decision, but was of no consequence to the story.

TVNZ concluded by observing that nothing in the broadcast on 2 December, or later broadcasts, was in breach of the codes cited. In TVNZ's view it was in the public interest to "explore the wider issue of whether a dispute over a building permit should result in someone going to prison."

Mr Jones' Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 5 March 1993, Mr Jones referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Mr Jones made the general observation that the *Holmes* show had a reputation for employing aggressive reporters. He noted that the reporter in this instance (Mr Valintine) had been at the District Court when some of the initial orders were made. Mr Valintine at that stage had offered to arbitrate the dispute and, from his involvement at that stage of the dispute, Mr Jones believed he would have been aware that the interim injunction had been made by consent, that the defendants had acknowledged their wrongdoing and agreed not to do any further work until the various defects were remedied. Mr Jones then noted that for TVNZ to portray Taylor and the Gillums as not understanding why they were being imprisoned was misleading and untruthful because, as TVNZ well knew, the Court had gone to considerable lengths to give the defendants the opportunity to comply with the by-laws.

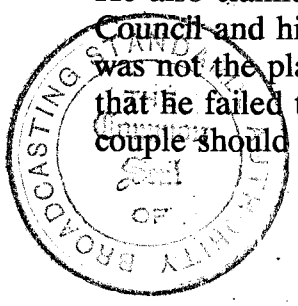
Mr Jones repeated his contention that the programme portrayed the Council and him as the villains and as overbearing bureaucrats jailing "innocent" people over minor building infringements. He claimed that the general impression given by the programme was that he was nitpicking and incompetent and was responsible for sending the couple to prison. He believed that the public had been misled by inaccurate statements and that neither he nor the Council had been given an opportunity to fairly state the position.

He wrote:

> The programme opens with a complete untruth, namely, that the Gillums were living in the home at the time they were imprisoned. In fact Mr Valintine knew that the Gillums were living in New Plymouth at the time and that the house was rented out.

Mr Jones claimed that no attempt was made to find out why the engineer's certificate was not accepted by the Council. He said that Mr Valintine knew that he was unable to speak because of the Council's policy not to discuss the issue with the media, but that information was available in the public arena (through court documents and Council correspondence with the Gillums and Mr Taylor) which documented the breaches. He claimed that had *Holmes* been genuinely interested in a balanced story they could have obtained the information under the Local Authority Official Information and Meetings Act 1987.

He also claimed that he did not believe reasonable efforts were made to give the Council and himself the opportunity to state their position. Television, he continued, was not the place to debate enforcement of regulations and by-laws. Mr Jones wrote that he failed to see how there was any public interest in the issue of whether a couple should go to prison because of a housing permit dispute. He commented:



> I could have understood that programme raising the issue of whether it was desirable in such cases as these for the Court to have the power to commit a party to jail for disobeying a Court order.

Observing that he was a servant of the Council and had merely been carrying out its instructions, Mr Jones claimed that the programme did not treat him fairly. In light of the court decision, and in particular the court's finding that the defendants had no credibility, he believed that it was unfair for the programme then to quote an extract from the judgment to offset comments and allegations made by Mr Taylor which were untrue and were known by the reporter to be untrue. The effect was to mislead the public.

Mr Jones believed that *Holmes* had failed to show that the Council had limited options. He referred to the outcomes of the various court hearings and the unwillingness of the parties to undertake the remedial work.

The Council had a duty to enforce its by-laws, Mr Jones continued, and this was not a situation for arbitration. He wrote:

> Using The Holmes Show logic, Council could well have found itself in a Catch-22 situation if it had not done anything and perhaps in ten years time if the house fell down, The Holmes Show would have taken great delight in showing the Council as not having done its duty in enforcing its by-laws. Despite TVNZ's assertion in their reply of 10 February 1993 this Council has not as at 5 March 1993 received any Engineer's reports relating to this issue.

Mr Jones denied that the couple was released from prison because of the programme. He pointed out that it was because of the Council's willingness to accept a further undertaking from the family and to apply subsequently to the court for their release that the matter was resolved. Alleging that *Holmes* made a complete mockery of the New Zealand legal system and was unfair to the Council and to him, Mr Jones reiterated his claim that it was an unfair attack which had no regard for the truth. He wrote:

> I believe that the programme was sensational and did not care as to the merits or the truth of the case. The Gillums and Mr Taylor were being asked to meet the same standard as anyone else constructing a dwelling.

Finally, Mr Jones claimed that there was no balance in the programme. He claimed that the full facts were known to the *Holmes* programme and that it took advantage of the fact that neither Mr Jones nor the Council was able to answer openly allegations made by Mr Taylor (the builder) which were untrue and which were known by the *Holmes* programme to be untrue. He added:

> In conclusion I feel hard done by. I believe that I have been defamed. I believe that the programme produced by Holmes was malicious in its regard to the truth of the matter and the Complaints Committee of Television New Zealand Limited have sought in their letter to justify the unjustifiable without

> regard to matters well known to at least the journalist concerned, Mr Valintine and by implication to producers of The Holmes Show.

Mr Jones appended as background information, transcripts of the court hearings and copies of the correspondence between the parties. This included the decision of Judge Moore issued 29 May 1992 on the Application for Committal Orders by the Plaintiff (Papakura District Council) against all Defendants (the Gillums and Mr Taylor), a memorandum for his Honour the Judge dated 20 March 1990 from the Papakura District Council, a memorandum from Judge Moore dated 14 August 1990 to enforce the injunction against the defendants, a copy of an interim injunction dated 6 June 1990, an undertaking by the Gillums dated October 1990, and the decision of District Court Judge Moore dated 4 December 1992.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 8 March 1993, and TVNZ's reply, 19 April.

TVNZ prefaced its remarks noting:

> It was accepted and stated in the programme that both Mr Taylor (who built the house) and the Gillums had breached court orders.

It then went on to explain the nature of the reporter's involvement in the case (referred to by Mr Jones). It reported that it was the reporter's belief that at the heart of the issue was a personality conflict between Mr Taylor and Mr Jones. It noted that the reporter had been invited by Mr Taylor to act as arbitrator between him and Mr Jones. TVNZ emphasised that at this stage, the reporter had not begun to consider the dispute as a potential story, but simply as an opportunity to settle a long-standing dispute. However, it transpired that Mr Valentine was not invited to stay to settle the dispute and no agreement was reached between the parties until several months later. TVNZ continued:

> With the support of the Mayor of Papakura, the reporter was again asked to an on site meeting, after the programme went to air, to help resolve matters which were still outstanding. It seems a peculiar situation when a news media reporter has to assist the resolution of an affair which had been festering for years involving a building permit.
>
> The reporter was commended by the Papakura Council's Consultant Engineer for his arbitration role in this matter. He and a Council officer said the matter would not have been resolved without the reporter's assistance.

Having established this information as background, TVNZ then examined each of the standards allegedly breached. It acknowledged that it was inaccurate to say that the Gillums were living in the house at the time of their arrest, noting that the fault arose in the processing of the material. However, it did not believe that the error was

sufficiently serious to justify correcting it.

With reference to standard G4, TVNZ responded that it had tried hard to get Council's side of the story, but that neither Mr Jones nor the Council was prepared to appear on the programme or to discuss the matter. It explained that the reporter made many approaches to Mr Jones seeking information and to ensure that the Council was given the opportunity to respond.

TVNZ noted its puzzlement with Mr Jones' belief that the matter was subjudice, observing that its own legal advice was that discussion of the dispute was not in breach of court orders. Further, it noted, the Mayor of Papakura clearly believed that he was at liberty to speak on the issue and had invited TVNZ to interview him.

In response to Mr Jones' argument that he was merely a servant of the Council and was carrying out its instructions, TVNZ observed that those instructions were the consequence of recommendations made by Mr Jones and accepted by the Council. It noted that it was unable to respond in detail to the allegations that Mr Taylor's comments were incorrect because no specific examples were given by Mr Jones.

When no Council officers would appear on camera, it continued, the reporter included another opinion on Mr Taylor when he read an extract from the District Court decision. It repeated its assertion that the long standing dispute was resolved as a result of the broadcast.

With reference to standard G5 (respect for the principles of law), TVNZ submitted that the Authority should not consider this as the matter was not raised in the formal complaint considered by its Complaints Committee.

TVNZ disagreed with Mr Jones' assertion that the matter was not a situation for arbitration, noting that in fact that was how the dispute was finally resolved. It wrote:

> The truth of the matter is that this dispute was only finally resolved by arbitration - a process in which the Council withdrew some of its demands when its own Consultant Engineer said they were unnecessary.

TVNZ challenged Mr Jones's claim that the dispute had not been resolved as a result of the broadcast of the item, pointing out that it was as a result of the Mayor of Papakura seeing the programme that a resolution was arbitrated. It noted that the Mayor and TVNZ's reporting team negotiated with the parties to reach an agreement that would be accepted by the court and that it was achieved quickly.

In defending its reporting of the dispute, TVNZ pointed out that the issue was not just whether the young couple should be imprisoned for failing to meet by-laws, but also concerned the wider issue of whether the Council had handled the matter correctly. It pointed out that the manner in which a local body carried out its duties was "a legitimate subject for public scrutiny and discussion through the news media." TVNZ also reported that the Engineer was prepared to testify that the Gillums were being asked to meet higher standards in their dwelling, especially in relation to the

foundations, than were others in the same subdivision.

Responding to the allegation that the broadcast breached standard G6, TVNZ noted that this was the nub of Mr Jones's complaint. It rejected his allegation that there was no balance to the programme, pointing out that the reporter had spoken to as many people as he could, including officials and the offending builder. The item, it continued, made it clear that the Gillums and Taylor had consistently breached the by-laws and court orders. It also noted that there was a dispute over the necessity of the requirements.

It was TVNZ's view that the Council was given every opportunity to answer the allegations made, but chose not to. The report, it noted, was accurate in its facts (apart from the minor error which TVNZ acknowledged) and included "reasonably based opinion".

TVNZ rejected as inappropriate Mr Jones's suggestion that the programme should have been produced with a heavy loading on the side of the Council to emphasise its regulatory responsibilities and lack of available options. It concluded:

> We would have preferred to have comment from the Council in the programme. The fact that it was not forthcoming was unfortunate, but not sufficient reason to abandon an investigation of a matter that was clearly in the public interest.

Mr Jones' Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 30 April 1993, Mr Jones challenged TVNZ's interpretation of the events. He expressed his disappointment at the response from TVNZ and accused it of trying to mislead the Authority. He explained that the broadcast of the item had caused him and his family considerable stress and anxiety.

He disputed a number of points (the headings have been added by the Authority to enable cross-referencing in the further correspondence summarised in this Appendix).

1) The involvement of Mr Valintine as arbitrator. Mr Jones stated that this was never agreed to by the Council, even though Mr Valintine was apparently attempting to assume that role.

2) The reporter was commended by the Council's consultant engineer for his role in settling the dispute. Mr Jones commented that Mr Valintine was present at a meeting with the engineer and was thanked as a matter of courtesy for keeping Mr Taylor to the point. He was not an arbitrator. He was there as an observer on behalf of Mr Taylor. There was nothing to arbitrate. It was a matter of compliance with standards.

3) The Gillums were not living in the house. Mr Jones stated that although

TVNZ acknowledged that this was reported incorrectly, they attempted to mislead the Authority by claiming the error was made with the editing. He found it hard to believe that Mr Valintine did not know what he was saying when he narrated the item. The statement that they were still living in the house was given considerable prominence by being at the beginning of the item. Mr Valintine knew that there were tenants in the house as he had done a lot of filming there.

4) The extent of the defects. TVNZ had available to it the court pleadings which contained extensive affidavits by various inspectors including photographs which showed the defects. Some of the defects were minor but still required explanation. Mr Jones asserted that Mr Valintine would have known to be untrue the statement by Mr Taylor that there was no second hand timber in the house. There were photographs of it in the court file.

Secondly, he stated that there were internal conflicts in the story about the pile which Mr Taylor said was 3/8 inch out, while Mr Reelick, the engineer said its was outside the Council's required standard (which is greater than 3/8 inch). Mr Jones claimed that Mr Valintine would have known that no certificate had been received by the Council stating that the pile, despite the fault, was satisfactory.

Mr Taylor alleged that Mr Jones found fault with the house because it was not in character in the neighbourhood. Mr Jones claimed Mr Valintine would have known this to be untrue because the problems with the house arose prior to the Papakura District Council's jurisdiction; there have been no requirements that necessitated a change to the external appearance; and there has been no evidence of personality conflict between Mr Jones and Mr Taylor. Mr Jones dismissed Mr Valintine's impression as self serving.

5) TVNZ's letter is misleading as to the history of the matter. In its judgment issued 29 May 1992, the Court rejected the argument that there was a personality conflict, noting that the proceedings had commenced before Mr Jones was involved. Mr Jones noted that Mr Valintine had a copy of that decision, but because it made a better story, he wanted to portray him as petty and vengeful. He accused TVNZ of being high handed and unethical.

6) The on site meeting. Mr Jones disputed Mr Taylor's allegation that he would never agree to meet him on site to tell him what was wrong. He pointed out that Mr Valintine knew that this was untrue.

7) The dispute was resolved. Mr Jones disputed TVNZ's claim that a long standing dispute was resolved as a result of the broadcast, pointing out that the matter was still before the courts and the final documentation has still not been supplied.

8) The necessity of the requirements. Mr Jones disputed TVNZ's claim that "the Council withdrew some of its demands when its own consulting engineer said

they were unnecessary". He said such a statement was completely untrue. The engineer, Mr Clark, in fact confirmed that the Council's requirements were necessary.

9) Mr Jones challenged TVNZ's claim that it negotiated a prompt solution. In fact the public pressure resulting from the biased programme put the Council in the position of having to act. On advice from its solicitors (not as a result of negotiating with TVNZ's reporters) a proposal was developed to give the Gillums and Taylor another chance. The matter was not resolved as a result of arbitration by the reporter.

10) Mr Jones accused TVNZ of attempting to litigate this matter through the media rather than through the Courts. Mr Jones enclosed a letter from the Council's solicitor confirming earlier advice that the matter was subjudice.

11) TVNZ ought to have made full enquiries. TVNZ should have availed itself of the provisions of the Local Authority Official Information and Meetings Act 1987 to get the relevant information and should not have allowed the presentation of lies and half truths when it knew from the court documents that these were untrue. Mr Jones wrote:

> Television is too powerful a medium for irresponsible presentation of facts and even opinions. Even Mr Reelick is dissatisfied with his comments on the Holmes show. He advises me he was quoted out of context of the interview.

Further, he noted, as a servant of the Council he was not at liberty to speak about the matter.

12) The role of the reporter. Mr Jones disputed TVNZ's assertion that at the initial meeting Mr Valintine was only making preliminary enquiries without intending to do a story. He noted that he had a camera crew with him and that he failed to make any enquiries at Council at that time (about July 1991).

13) Council's options. He disputed TVNZ's suggestion that the Council had options open to it, noting that the Council had taken the most conciliatory approach possible through the whole proceedings and that there had been a history of long delays to enable matters to be rectified. He also noted that at no time had the Gillums or Taylor disputed the fact that the work needed to be done. The issue had always been one of compliance with the notices. Mr Jones claimed that Mr Reelick, the engineer, believed he had been quoted out of context.

14) Council's statutory obligations. Mr Jones noted that the Council has a statutory obligation to enforce its by laws and if the parties will not conform to by-laws voluntarily, then it has to be by way of court action. When the first stop work notices were issued, the building was at the foundation stage. Had the defects been remedied then, the whole matter could have been completed

more quickly. The Gillums and Taylor had agreed to rectify certain defects but then have been unwilling to comply. Council, he continued, has given the Gillums and Taylor the option of either producing an engineer's certificate of alternatively demonstrating compliance with the code. In Mr Jones' opinion, Council had been more than reasonable.

15) The question of balance. Mr Jones stated that the only question that could be construed as a "hard" question challenging Mr Taylor's integrity was the quotation from the Court decision. Mr Taylor's response, in Mr Jones' view, made no sense.

16) The accuracy of the report. Mr Jones disputed TVNZ's claim that its report did not include any matter now known to be untrue, pointing out that TVNZ would be aware that additional works had been done since the television programme.

> These works include correction of plumbing, covering of the deck timbers and untreated timber, the replacing of a plate at the base of a post in the garage, extensions to the fire hearth, installation of extra timbers under load bearing walls under the house, the checking of defective particle board flooring by the engineer.

17) Mr Jones rejected TVNZ's claim that he was requiring higher standards of the Gillums. He noted that in fact the Council granted a dispensation in respect of foundations for the garage which technically did not comply with the building code.

18) Effect on Mr Jones. Finally, Mr Jones claimed that he and his family had suffered considerable stress as a result of the programme. He accused TVNZ of conveniently ignoring the truth and presenting a story based on the popular myth that building inspectors are "bureaucratic unreasonable little Hitlers". It attempted to justify that stance because the Council would not respond. Mr Jones defended the Council's decision to act in accordance with legal advice. He also noted that no other news service was prepared to run this story. He concluded:

> I believe that TVNZ is out of line in its original programme and also disturbingly is now attempting to mislead this Authority as to the true facts of the matter.

Mr Jones enclosed a letter to the Council from its solicitors and copies of the undertakings signed by the Gillums that they would complete all outstanding work by 20 February 1993.

TVNZ's Response to Mr Jones' Final Comment

In a 10 page letter dated 26 May 1993, TVNZ responded to Mr Jones' letter of 30

April. Its numbered points correspond with the points made in his letter.

At the outset, TVNZ observed that the complainant may have unwittingly strayed into an area far removed from the initial formal complaint, and perhaps outside of the jurisdiction of the Authority, observing that it believed the Authority was being asked to adjudicate on the chain of events that was the subject of the item rather than on the item itself.

TVNZ responded to each point:

1) The role of Mr Valintine as arbitrator. TVNZ stated that this was outside of the scope of the original complaint. The matter had only been raised to illustrate the restrained approach TVNZ had taken. The statement that "Council had changed its mind" was conveyed to Mr Valintine by Mr Taylor.

   TVNZ maintained that its account of these matters in its 19 April letter was correct but was not a matter that was relevant to the complaint.

2) The reporter was commended by the Council for his arbitration role. Mr Jones described this as misleading the Authority; TVNZ responded that it was a matter outside the area of the original complaint and comprised opinion on Mr Jones' part, with which it did not agree.

3) The Gillums were living in the house. Mr Jones accused TVNZ of attempting to mislead the Authority. TVNZ responded that the error occurred in the introduction to the item (not the fault of the reporter) and that it regretted the error.

4) The portrayal of Mr Jones, the reliance on statements by Mr Taylor.
   TVNZ pointed out that the complaints procedure allowed the complainant to bring forward matters of concern, but if they did not spell them out, TVNZ could not act as a mind reader. It noted that news items reported both fact and opinion and that Mr Taylor's views were relevant and worthy of inclusion. It reminded Mr Jones that he had been given every opportunity to comment. TVNZ rejected Mr Jones' suggestion that the court documents and photographs were available to it, pointing out that the Council itself could have made these available to the reporter, to ensure that nothing was overlooked. However, it regarded this detail as irrelevant because an item of this nature cannot concern itself with minutiae. The item acknowledged that Taylor and the Gillums had defied Council requirements and had breached court orders. It regarded Mr Taylor's assertion that no secondhand timber was used as an important aspect of the dispute and duly reported that.
   With respect to the Engineering certificate, TVNZ stated that the item never said that one had been received by the Council certifying that the pile was satisfactory. What the item did was to report the views of the engineer and the builder. It claimed that it was quite proper for the programme to report Mr Taylor's view that the reason for the conflict was because Mr Jones thought the house was out of character in the neighbourhood. It noted that it

would have willingly reported comment from the Council but none was forthcoming. It rejected Mr Jones' description of the reporter as self-serving, emphasising that he had attempted to resolve the issues without the television item ever being made and had done all he could to resolve the dispute.

5) The history. TVNZ denied that it had misled viewers over the history of the matter, pointing out that although the house had been under the jurisdiction of the Manukau City Council, there had been a continuing conflict between Mr Taylor and Mr Jones since the Papakura District Council gained jurisdiction.

6) Meeting on site. TVNZ responded that it had reported what Mr Taylor said (that Mr Jones would not meet him on site to tell him what was wrong) and noted that a response from the Council or Mr Jones would have been welcomed.

7) The matter is now resolved. Mr Jones wrote that it was still before the courts and had not been resolved, to which TVNZ responded that according to the Mayor of Papakura it was resolved, but if that was not the case, it would continue to follow the matter. TVNZ understood that Mr Reelick was owed $8000 by the Gillums and Taylor and would not give the final certificate until that was paid. It noted that the Mayor of Papakura had expressed a willingness to assist and be interviewed if a further report was done.

8) The Council withdrew its demands. Mr Jones said this was untrue. TVNZ quoted examples of where the Council changed its requirements - eg the linings were supposed to be removed so that walls could be checked. After discussion it was agreed that this could be done without removing the linings. Secondly, the Council agreed to defer the work on the fireplace flue until winter time.

9) The reporting team negotiated an agreement between the parties. Mr Jones disputed this statement. TVNZ responded that the reporter was given the clear indication from all concerned that there was substantial give and take following the broadcast of the item and the matter was finally resolved.

10/11 Litigation through the media rather than the court. Mr Jones expressed the view that the matter was subjudice. TVNZ responded that it had legal advice the contrary. It noted that it had attempted to get comment from the Council and was given no reason for its refusal. Had it known it was for fear of breaching the subjudice rule, it would have investigated an alternative approach. TVNZ considered that the story was one which had to be told, it gave all concerned an opportunity to be involved in the programme and every reasonable effort was made to present a fair and balanced report. It considered that this was a case where a principal player declined to give any assistance and had then cried "foul" because his point of view was not included.

12) The meeting at Papakura District Court in July 1991. TVNZ responded that this fact was only relevant in showing how restrained the reporter had been in

dealing with the case.

13/14 The Council had choices about its actions. Mr Jones claimed that the Council had always adopted the most conciliatory approach. TVNZ maintained that it did have choices such as going to arbitration. Mr Taylor was entitled to give his opinion on how he felt the Council handled matters - the Council refused to cooperate.

15) Balance, impartiality and fairness. Mr Jones: there was only one hard question asked of Mr Taylor and his response made no sense.
TVNZ: Mr Jones had the opportunity to criticise Mr Taylor but refused to do so; he cannot now accuse TVNZ of being unfair.

16) Whether all matters in the report were true. Mr Jones: As TVNZ knew, additional works had been done on the house since the programme.
TVNZ: This was not relevant because the formal complaint referred only to what was broadcast.

17) Higher standards were required in this building. TVNZ: this was irrelevant.

18) Mr Jones was portrayed as the bad guy and his life has been made a misery.
TVNZ: Mr Jones was blaming the messenger. This was a story of public interest, it was a pity that he was not allowed to comment. He was a key player in this matter and was the appropriate person to comment. He was not singled out as the target of journalistic disapproval. It was the Council which was shown to be responsible for what was going on.

TVNZ concluded by reaffirming that the item was in the public interest. It was a story worth telling and the item was a genuine attempt to summarise a series of complex events together with several relevant opinions. It concluded:

> Allowing for the fact that the Council would make no comment officially, and was unprepared to assist in an off-the-record manner, we believe the item gave a fair and balanced view of the developments in Conifer Grove which led to the imprisonment of the Gillums.

It totally rejected suggestions that it was attempting to mislead the Authority. It reaffirmed that the item shown on *Holmes* was in the public interest and was a "genuine attempt to summarise a series of complex events together with relevant opinions."

Mr Jones' Response to TVNZ

In a letter dated 8 June 1993, Mr Jones responded to some of the points raised in TVNZ's letter of 26 May.

1) The assertion that Mr Valintine acted as arbitrator. Mr Clark the Consultant

Engineer would confirm that he did not tell Mr Valintine that the matter could not have been resolved without his help.

2) The Gillums were living in the building. It was deliberate and misleading not to reveal that the dwelling was rented. The whole show gave the impression the Gillums were living there.

3) The house was out of context in the neighbourhood. This was a complete untruth. This matter had never been raised in court or by the solicitors. Yet TVNZ had accepted Taylor's word that this was fact. TVNZ should not have relied on him for the truth.

4) The alleged conflict between Mr Jones and Mr Taylor. Why didn't the court pick this up?

5) The Council withdrew some of its demands. Nothing has been withdrawn. No linings on the roof were ever asked to be removed. The walls of the garage had to be approved by the engineer. It may have been necessary to remove wall linings to check the studs and bracing. The extra protection for the fire flue was still required, although the time was extended. None of these matters represented Council backing down on its demands.

6) Mr Valintine's restraint in sitting on the story. This could have been because it was not sensational enough at the early stage.

7) The relevance of subsequent events. They were relevant because they indicate the validity of Mr Taylor's statements and Mr Reelick's statements and the correctness of the court decision.

Mr Jones concluded by reiterating:

a) His conditions of employment prohibited him from communicating with news media without specific approval from the CEO.

b) The programme totally ignored the decision of the court.

c) TVNZ's reporting sensationalised one side of the story; the court decision told the reverse.